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OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT DURING THE REAGAN ADMINISTRATION--PART I

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COMMENTARY

OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT DURING THE REAGAN ADMINISTRATION—PART I*

G. KEVIN JONES**

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* Part II of this study, to be published in Volume 12:2 of the *Western New England Law Review*, reviews the second Reagan OCS program prepared by Secretary Hodel for the years 1987-92.

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This article is an expression of the author's personal opinions and does not necessarily reflect the opinions, policies, or positions of the Judicial Fellows Program, or any other federal agency or department.

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The President is vitally interested in developing national energy self-sufficiency, and views acceleration in offshore leasing as an integral part of his economic recovery program.¹

James G. Watt, Secretary of
the Interior, 1981-83.

INTRODUCTION

The development of outer continental shelf (OCS) oil and gas resources has raised recurring problems in federal-state relations.² The

1. *OCS Oversight—Part 2: Hearings on OCS Oversight and Related Issues, the National OCS Program and the Five-Year OCS Leasing Program Before the Subcomm. on the Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 97th Cong., 1st Sess. 51 (1981) [hereinafter *OCS Oversight Hearings—Part 2*] (statement of James G. Watt, Secretary of the Interior).

2. See Breeden, *Federalism and the Development of Outer Continental Shelf Mineral Resources*, 28 STAN. L. REV. 1107 (1976); Galloway & Nixon, *The Newest Federalism and Coastal Areas*, 25 OCEANUS 3 (1982). For discussions on federalism and natural resource development, see generally Anson & Schenckan, *Federalism, the Dormant Commerce Clause, and State-Owned Resources*, 59 TEX. L. REV. 71 (1980); Ball, *Good Old American Permits: Madisonian Federalism on the Territorial Sea and Continental Shelf*, 12 ENVTL.

problems raised concern matters such as how, when, and in what man-

L. 623 (1982); Berg, *Management of Pacific Ocean Salmon Ranching: A Problem of Federalism in the Coastal Zone*, 9 COASTAL ZONE MGMT. J. 41 (1981); Berg, *Private Ocean Ranching of Pacific Salmon and Fishery Management: A Problem of Federalism*, 12 ENVTL. L. 81 (1981); Florini, *Issues of Federalism in Hazardous Waste Control: Cooperation or Confusion?*, 6 HARV. ENVTL. L. REV. 307 (1982); Greenberg & Shapiro, *Federalism in the Fishery Conservation Zone: A New Role for the States in An Era of Federal Regulatory Reform*, 55 S. CAL. L. REV. 641 (1982); Kanouse, *Achieving Federalism in the Regulation of Coastal Energy Facility Siting*, 8 ECOLOGY L.Q. 533 (1980); MacRae, *The Fishery Conservation and Management Act: The States' Role in Domestic and International Fishery Management*, 88 DICK. L. REV. 306 (1984); Mills & Woodson, *Energy Policy: A Test for Federalism*, 18 ARIZ. L. REV. 405 (1976); Moull, *Natural Resources: The Other Crisis in Canadian Federalism*, 18 OSGOODE HALL L.J. 1 (1980); Rogalski, *The Unique Federalism of the Regional Councils Under the Fishery Conservation and Management Act of 1976*, 9 B.C. ENVTL. AFF. L. REV. 163 (1980); Schoenbaum & Parker, *Federalism in the Coastal Zone: Three Models of State Jurisdiction and Control*, 57 N.C.L. REV. 231 (1979); Skillern, *Constitutional and Statutory Issues of Federalism in the Development of Energy Resources*, 17 NAT. RESOURCES LAW. 533 (1985); Squillace, *Cooperative Federalism Under the Surface Mining Control and Reclamation Act: Is This Any Way to Run A Government?*, 87 W. VA. L. REV. 687 (1985); Note, *The Commerce Clause and Federalism: Implications for State Control of Natural Resources*, 50 GEO. WASH. L. REV. 601 (1982).

Since the 1973-74 Arab oil embargo, the federal government, as part of a national policy to achieve energy self-sufficiency, has supported programs to increase the production of domestic energy resources, particularly the large quantities of fossil fuels located in the western United States. Hall, White & Ballard, *Western States and National Energy Policy*, 22 AM. BEHAVIORAL SCIENTIST 191 (1978) [hereinafter Hall]. For example, President Carter proposed the creation of an Energy Mobilization Board (EMB) in his July 15, 1979 energy address to the nation. The EMB would be empowered to expedite decisionmaking of federal, state, and local agencies of priority energy projects. Comment, *The Energy Mobilization Board*, 8 ECOLOGY L.Q. 727, 727 (1980) [hereinafter *The Energy Mobilization Board*]. The expediting process, often referred to as "fast tracking," raised significant constitutional problems. The difficulty with "fast tracking" was the attempt to dictate to the states and local governments the means by which those entities should discharge their delegated functions. Fischer, *Allocating Decisionmaking in the Field of Energy Resource Development: Some Questions and Suggestions*, 22 ARIZ. L. REV. 785, 863-64 (1980). "Fast tracking" would have resulted in the imposition of federal controls over basic state and local government decisionmaking concerning the selection, approval, and licensing of designated priority energy projects. State and local government decisionmaking powers and approval processes would be subject to preemption by the EMB. Fischer, *supra*, at 848. Western states were also concerned that such legislation would transfer the control of water availability from them to the EMB and eventually result in federal control of a traditional local resource. Fischer, *supra*, at 831. Congress rejected President Carter's EMB proposal because of concerns that the EMB would encroach upon states' rights. *The Energy Mobilization Board, supra*, at 747.

These policies have affected federal-state relations, and some western states have argued for a larger role in national decisionmaking in energy, environmental, and natural resource areas. Hall, *supra*, at 191-92. For discussions on federal-state relationships and resource development, see generally Engdahl, *Some Observations on State and Federal Control of Natural Resources*, 15 Hous. L. REV. 1201 (1978); Engdahl, *State and Federal Power over Federal Property*, 18 ARIZ. L. REV. 283 (1976); Grainey, *Energy Conservation: The Federal-State Nexus*, 27 AM. U.L. REV. 611 (1978); Harvey, *Federal-State Relationships in Federal Land and Resource Management*, 54 DEN. L.J. 585 (1977); Huffman, *Governing America's Resources: Federalism in the 1980's*, 12 ENVTL. L. 863 (1982); Leman &

ner OCS petroleum resources should be developed to satisfy national energy requirements.³ National plans to increase oil and gas production on the OCS have provoked conflict between coastal states and the federal government for the last decade.⁴

Coastal states are concerned over both the development of OCS energy resources within their coastal areas,⁵ and the federal government's failure to develop a comprehensive national energy plan.⁶ A consequence of that failure is that one resource may be favored for expedited development over other resources.⁷ Furthermore, the OCS leasing program will be largely determined by national policies set by

Nelson, *The Rise of Managerial Federalism: An Assessment of Benefits and Costs*, 12 ENVTL. L. 981 (1982); Lyons, *Federalism and Resource Development: A New Role for States?*, 12 ENVTL. L. 931 (1982); Shapiro, *Energy Development on the Public Domain: Federal/State Cooperation and Conflict Regarding Environmental Land Use Control*, 9 NAT. RESOURCES LAW. 397 (1976); Thomas, *The Cape Cod National Seashore: A Case Study of Federal Administrative Control Over Traditionally Local Land Use Decisions*, 12 B.C. ENVTL. AFF. L. REV. 225 (1985); White & Barry, *Energy Development in the West: Conflict and Coordination of Governmental Decision-Making*, 52 N.D.L. REV. 451 (1976); Comment, *The Property Power, Federalism, and the Equal Footing Doctrine*, 80 COLUM. L. REV. 817 (1980); Note, *Federal-State Conflict in Energy Development: An Illustration*, 53 DEN. L.J. 521 (1976); Comment, *Federal and State Cooperation in the Management of Public Lands*, 5 J. CONTEMP. L. 149 (1978); Comment, *State and Local Control of Energy Development on Federal Lands*, 32 STAN. L. REV. 373 (1980).

3. Breeden, *supra* note 2, at 1108; Skillern, *supra* note 2, at 534.

4. *OCS Five-Year Development Plan: Hearing on the Department of the Interior's Recommendations for this Nation's Outer Continental Shelf Oil and Gas Leasing Program for the Next Five Years Before the Subcomm. on Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 100th Cong., 1st Sess. 1-2 (1987) [hereinafter *Hearing on OCS Five-Year Dev. Plan*] (statement of Representative W.J. (Billy) Tauzin of Louisiana); *Five Year OCS Leasing Schedule: Hearing on the Status of the Current Five-Year Outer Continental Shelf Leasing Schedule, the Pace of the Leasing Schedule, and Other OCS-Related Issues Before the Subcomm. on Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 98th Cong., 2d Sess. 2 (1984) [hereinafter *Hearing on the Five-Year OCS Leasing Schedule*]; STAFF OF THE SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS OF THE HOUSE COMM. ON INTERIOR AND INSULAR AFFAIRS, 98TH CONG., 1ST SESS., A REPORT ON THE SECRETARY OF THE INTERIOR JAMES G. WATT'S FIVE YEAR OIL AND GAS LEASING PLAN FOR THE OUTER CONTINENTAL SHELF 1 (Comm. Print 1983) [hereinafter *HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN*].

5. See generally Hunt, *Introduction: Offshore Oil and Gas—Past, Present, Future*, 26 OCEANUS 3 (1983); Note, "Not on My Beach": *Local California Initiatives to Prevent On-shore Support Facilities for Offshore Oil Development*, 38 HASTINGS L.J. 957 (1987).

6. *National Energy Policies Should Improve While Oil Market Depressed*, Oil & Gas J., Mar. 31, 1986, at 41; *Energy Policy in the U.S. Still Failing Due to Faulty Premises*, Oil & Gas J., Mar. 17, 1986, at 41; *Industry Should Seek Sound U.S. Energy Policy, Not Oil Import Levy*, Oil & Gas J., Sept. 16, 1985, at 55; *U.S. Nonenergy Policies Undermine Energy Policy's Market Emphasis*, Oil & Gas J., Aug. 12, 1985, at 39; *Energy Plan Needed Now, Offshore*, May 1985, at 97; *DOE, Interior Merger Could Strengthen U.S. Energy Policy*, Oil & Gas J., Jan. 28, 1985, at 55.

7. Skillern, *supra* note 2, at 534-35.

the federal government, but the development of OCS oil and gas reserves will have a severe impact on the states.⁸ Coastal states must respond to the "boomtown" effects from OCS energy development.⁹ The states must assume the costs of providing a proper infrastructure—new housing, schools, roads, and expanded municipal services—in those areas impacted by offshore oil development.¹⁰

To accelerate the development of the nation's OCS energy resources, the Reagan administration approved two OCS leasing programs¹¹ that go far beyond the leasing schedules of every administration from President Eisenhower, when OCS leasing began, to President Carter.¹² The first leasing program, developed by Secretary Watt, covered the five-year period from August 1982 to June 1987.¹³ The second program, prepared by Secretary Hodel, extends from mid-1987 to mid-1992.¹⁴

Development of OCS resources, however, presents numerous environmental, economic, and political concerns.¹⁵ "No other region in our country is subject to so many urgent demands from powerful con-

8. H.R. REP. NO. 590, 95th Cong., 1st Sess. 55, 89, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1450, 1496 [hereinafter H.R. REP. NO. 590]. *See also* Hall, *supra* note 2, at 191.

9. H.R. REP. NO. 590, *supra* note 8, at 89, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1496. *See also* Skillern, *supra* note 2, at 535.

10. H.R. REP. NO. 590, *supra* note 8, at 55, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1462. *See also* Skillern, *supra* note 2, at 535.

11. The Outer Continental Shelf Lands Act Amendments require the Secretary of the Interior to prepare a five-year plan for oil and gas leasing indicating the size, timing, and location of leasing activity which the Secretary determines will best meet national energy needs. 43 U.S.C. § 1344 (1982).

12. *Outer Continental Shelf Lease Sales and the Department of the Interior's Five-Year Leasing Plan—Part 1: Hearings on Outer Continental Shelf Lease Sales and the Department of the Interior's Five-Year Leasing Plan Before the Subcomm. on Oversight and Investigations and the Subcomm. on Mines and Mining of the House Comm. on Interior and Insular Affairs*, 97th Cong., 1st & 2d Sess. 513 (1983) [hereinafter *Hearings on OCS Lease Sales—Part 1*].

13. BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF THE INTERIOR, 1 FINAL SUPPLEMENT TO THE FINAL ENVIRONMENT IMPACT STATEMENT: PROPOSED FIVE-YEAR OCS OIL AND GAS LEASE SALE SCHEDULE, JANUARY 1982-DECEMBER 1986 (1981) [hereinafter 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE]; HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 1.

14. MINERALS MANAGEMENT SERV., U.S. DEP'T OF THE INTERIOR, PROPOSED FINAL FIVE-YEAR OUTER CONTINENTAL SHELF OIL AND GAS LEASING PROGRAM MID-1987 TO MID-1992 (1987) [hereinafter PROPOSED FINAL FIVE-YEAR OCS LEASING PROGRAM 1987-1992]; Office of the Secretary, U.S. Dep't of the Interior, *News Release: Interior Department Releases Proposed Five-Year Offshore Oil and Gas Leasing Program* (Apr. 27, 1987) [hereinafter *U.S. Dep't of the Interior News Release*, Apr. 27, 1987].

15. Hunt, *supra* note 5, at 8.

flicting interests as the coastal area."¹⁶ More than 50% of the population of the United States currently lives within fifty miles of the country's coasts or the shores of the Great Lakes, and it is estimated that by the year 2000, 80% of our population may live in this area.¹⁷ The space available for that increased population will not change significantly in the next twenty years. The coastal zone will experience competitive demands for that limited space from commercial, residential, recreational, and other development interests which must be balanced against the impact on the scenic beauty and delicate ecological systems of the coastal zone.¹⁸

Coastal states are willing to contribute to national energy self-sufficiency and are not unalterably opposed to OCS leasing off their shores.¹⁹ However, they are concerned about the potential impacts an accelerated program would have on their coastal areas, and they fear that their interests may be overlooked by federal officials during the development of short-term energy policy.²⁰ The implementation of an accelerated OCS oil and gas program has been a subject of controversy since 1974 when President Nixon directed the Secretary of the Interior to triple, from three million to ten million acres a year, OCS acreage

16. Kuersteiner, Sullivan & Temin, *Protecting Our Coastal Interests: A Policy for Coordinating Coastal Zone Management, National Defense and the Federal Supremacy Doctrine*, 8 B.C. ENVTL. AFF. L. REV. 705 (1980).

17. S. REP. NO. 753, 92d Cong., 2d Sess. 2, reprinted in 1972 U.S. CODE CONG. & ADMIN. NEWS 4776, 4777 [hereinafter S. REP. NO. 753].

18. See S. REP. NO. 753, *supra* note 17, at 2, reprinted in 1972 U.S. CODE CONG. & ADMIN. NEWS 4777. The significance of the coastal zone and the competition among users within the area is described in a government report:

The coast of the United States is, in many respects, the Nation's most valuable geographic feature. It is at the juncture of the land and sea that the great part of this Nation's trade and industry takes place. The waters off the shore are among the most biologically productive regions of the Nation.

The uses of valuable coastal areas generate issues of intense State and local interest, but the effectiveness with which the resources of the coastal zone are used and protected often is a matter of national importance. Navigation and military uses of the coasts and waters offshore clearly are direct Federal responsibilities: economic development, recreation, and conservation interests are shared by the Federal Government and the States.

Rapidly intensifying use of coastal areas already has outrun the capabilities of local governments to plan their orderly development and to resolve conflicts. The division of responsibilities among the several levels of government is unclear, and the knowledge and procedures for formulating sound decisions are lacking.

S. REP. NO. 753, *supra* note 17, at 3, reprinted in 1972 U.S. CODE CONG. & ADMIN. NEWS 4778.

19. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 42.

20. *Id.*

under lease.²¹

Many of these controversies have continued with the implementation of Reagan administration policies and were particularly heightened under the tenure of Secretary Watt.²² The offshore oil and gas leasing program initiated by the Reagan administration was the most ambitious and controversial energy development program in the nation's history. Issues such as the pace and timing of lease sales, consultation and coordination with state and local governments and interested parties, prelease consistency,²³ areawide leasing, fair market value, and leasing moratoria have become major obstacles to the full implementation of an accelerated OCS oil and gas program. These issues predominantly emerged following the inauguration of President Reagan in 1981²⁴ and are the focus of this study.

Accordingly, Part I examines the policy rationale for Secretary Watt's accelerated leasing program.²⁵ Part II examines the issues raised by opponents to the Secretary's approach including the coastal states' ability to cope with the onshore effects of increased offshore leasing,²⁶ questions about the DOI's ability to manage an increased leasing schedule²⁷ and about the petroleum industry's ability to increase OCS exploration,²⁸ and concerns about the Reagan administration's commitment to protecting the coastal environment.²⁹ Part II also examines additional environmental concerns raised by areawide leasing³⁰ and discusses whether areawide leasing precludes receipt of fair market value for the public resources being sold.³¹ Part III examines the phenomenon of piecemeal leasing moratoria,³² the congressional response to Secretary Watt's accelerated leasing schedule. Finally, Part IV examines Secretary Watt's implementation of the areawide leasing concept.³³

21. H.R. REP. NO. 590, *supra* note 8, at 100, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1506-07.

22. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 1, 36, 42-49.

23. *Hearing on the Five-Year OCS Leasing Schedule*, *supra* note 4, at 46 (statement of Representative Young of Alaska).

24. *Id.*

25. *See infra* notes 34-101 and accompanying text.

26. *See infra* notes 110-46 and accompanying text.

27. *See infra* notes 147-49 and accompanying text.

28. *See infra* notes 150-58 and accompanying text.

29. *See infra* notes 160-81 and accompanying text.

30. *See infra* notes 182-219 and accompanying text.

31. *See infra* notes 220-97 and accompanying text.

32. *See infra* notes 298-368 and accompanying text.

33. *See infra* notes 369-422 and accompanying text.

I. THE WATT FIVE-YEAR OCS LEASING PROGRAM OF 1982-87 AND ASSOCIATED POLICIES

To accelerate the development of the nation's offshore energy potential, Secretary of the Interior James Watt, on July 21, 1982, approved a leasing schedule that offered almost the entire OCS for exploration and development.³⁴ This schedule replaced the June, 1980 final leasing schedule approved during the Carter administration by Interior Secretary Cecil Andrus.³⁵ The Watt program offered for lease nearly one billion acres of federal OCS lands during the five year period from August 1982 to June 1987, compared to fifty-five million acres under the Andrus proposal.³⁶ This amounted to twenty times as

34. Minerals Management Serv., U.S. Dep't of the Interior, *News Release 1* (July 21, 1982) [hereinafter *News Release* (July 21, 1982)]; *Final Five-Year Plan for Oil and Gas Development in the Outer Continental Shelf: Hearings to Review the Secretary of the Interior's Proposed Five-Year Plan for Oil and Gas Development in the Outer Continental Shelf Pursuant to the Outer Continental Shelf Lands Act Amendments of 1978 Before the Subcomm. on Energy Conservation and Supply of the Senate Comm. on Energy and Natural Resources, 97th Cong., 2d Sess. 1* (1982) [hereinafter *Senate Hearings on the Five-Year OCS Leasing Plan*] (statement of Senator Lowell Weicker of Connecticut).

The offshore leasing plan became final in July, 1982, after 19 months of consultation between the Department of the Interior and 23 affected states. The administrative record contains over 5000 pages and reflects participation by local governments, environmental groups, industry, and the public. The effort was described by Secretary Watt as "the most comprehensive, exhaustive project in the [Interior] Department's history." *Senate Hearings on the Five-Year OCS Leasing Plan, supra*, at 9 (statement of James G. Watt, Secretary of the Interior); *News Release* (July 21, 1982), *supra*.

With Congress unwilling to seriously consider legislation to abolish the Energy Department or hasten decontrol of natural gas prices, Secretary Watt's controversial program to rapidly accelerate the pace of federal OCS leasing was especially important. Watt's program was the only active energy policy proposal during the first term of the Reagan administration. *A Quiet Point Man for Oil Leasing*, *BUS. WK.* 75 (Aug. 30, 1982).

35. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 5-6; Vass, *A Comparison of American and British Offshore Oil Development During the Reagan and Thatcher Administrations, Part I*, 21 *TULSA L.J.* 23, 59-60 (1985) [hereinafter Vass I].

Changes in the leasing schedule are authorized by the Outer Continental Shelf Lands Act Amendments of 1978, Pub. L. No. 95-372, 92 Stat. 630 (codified as amended in scattered sections of 16 U.S.C., 30 U.S.C., 42 U.S.C., 43 U.S.C.). The Secretary of the Interior is charged with reviewing and periodically revising the OCS leasing program. 43 U.S.C. § 1344(a) (1982).

36. *News Release* (July 21, 1982), *supra* note 34, at 1, 4. See *Senate Hearings on the Five-Year OCS Leasing Plan, supra* note 34, at 14 (statement of James G. Watt, Secretary of the Interior). The exact size of the United States outer continental shelf has not been established. Area estimates provided by the Department of the Interior range from about 800 million to over one billion acres. *OCS Oversight—Part 1: Hearings on Provisions of the OCSLA Concerning Interrelationships of Federal and State Governments in the Decision-making Process and the Importance of the OCS on the Coastal Zone Before the Subcomm. on the Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries, 97th Cong., 1st Sess. 235* (1981) [hereinafter *OCS Oversight Hearings—Part*

much acreage as was offered under the Andrus plan, and twenty-five times as much as was offered during the entire period from 1954, when the program began, to 1980.³⁷

The Watt program scheduled forty-one lease sales over the five year period from 1982 to 1987. One billion acres, divided into eighteen planning areas ranging in size from 8 million to 133 million acres, were considered for leasing. In contrast, prior lease sales covered about two million acres.³⁸ One-half of the acreage offered was in Alaska's OCS.³⁹

Secretary Watt maintained that accelerating offshore leasing in frontier OCS areas, such as Alaska, was in the national interest.⁴⁰ He claimed that the program "will enhance . . . national security, provide

1]. For the purpose of this study, a reasonable estimate of the federal OCS areas out to a depth of 2500 meters is about one billion acres (965.8 million acres). COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. EMD 81-59, REPORT TO THE CONGRESS, ISSUES IN LEASING OFFSHORE LANDS FOR OIL AND GAS DEVELOPMENT 3-4 (1981) [hereinafter ISSUES IN LEASING OFFSHORE LANDS]. "This area is equal in size to roughly half the U.S. land mass." HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 6 n.19. Submerged lands under state jurisdiction are estimated to total an additional 32.7 million acres. ISSUES IN LEASING OFFSHORE LANDS, *supra*, at 3.

37. *Senate Hearings on the Five-Year OCS Leasing Plan*, *supra* note 34, at 1 (statement of Senator Lowell Weicker of Connecticut); HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 6.

38. *News Release* (July 21, 1982), *supra* note 34, at 4. Twelve sales were scheduled in the Gulf of Mexico, 16 in offshore Alaska, four in California, and eight in the Atlantic. One reoffering sale was scheduled to reoffer all of the unleased tracts. *News Release* (July 21, 1982), *supra* note 34, at 4. The final leasing program approved by Secretary Andrus in June 1980, scheduled 36 sales over the five-year period 1980 through 1985. Eleven sales were scheduled off the Gulf of Mexico, six in the Atlantic, four off California, and 10 in offshore Alaska. Five reoffering sales were also scheduled. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 5.

39. *Senate Hearings on the Five-Year OCS Leasing Plan*, *supra* note 34, at 21 (statement of James G. Watt, Secretary of the Interior).

40. Office of the Secretary, U.S. Dep't of the Interior, *News Release* (Apr. 16, 1981) [hereinafter *News Release* (Apr. 16, 1981)]. Secretary Watt explained the need to expedite leasing in high potential offshore areas in the following manner:

Much of America's untapped petroleum resource may lie offshore in frontier areas which have never been explored. To help reduce our dependence on costly and uncertain foreign oil, we must inventory the lands subject to Federal control in order to determine the value of the resources which may be hidden within them. To do so we must facilitate exploration and development in those areas with potential resource value. The proposal which is being announced today is designed to achieve these goals while preserving sound environmental safeguards.

The program we are proposing will make more acreage available for leasing, will cut substantially the time now required to start leasing in promising frontier areas, and will use the market mechanism rather than arbitrary government decisions in selecting areas for lease and exploration.

By improving leasing procedures and eliminating administrative bottlenecks,

jobs, and protect the environment while making America less dependent on foreign oil sources."⁴¹ According to Secretary Watt, his OCS lease schedule would improve the efficiency of the OCS leasing program and increase the availability to the United States of critical offshore energy resources. The Secretary outlined the major objectives of the revised OCS program as including: (1) a substantial increase in the rate of OCS leasing; (2) early lease sales of frontier areas with high oil and gas potential; (3) streamlining the OCS program to shorten the presale planning process including telescoping, areawide environmental analysis, and tiering of National Environmental Policy Act (NEPA) assessments.⁴² The main thrust of the program was to accelerate the rate of OCS lease sales.⁴³

we can speed leasing while at the same time maintaining careful protection of environmental values.

Id.

41. *News Release* (July 21, 1982), *supra* note 34, at 1. James Edwards, Energy Secretary, hailed the decision to accelerate the pace of offshore oil and gas leasing on the OCS:

America is and for many years in the future will continue to be heavily dependent upon petroleum. Conservation can help, and is helping, but conservation is not the total answer. What we desperately need—and what has been lacking in recent times—is a determination and commitment to find and put into production the petroleum resources that America has.

The President believes that we can restore our capabilities to produce enough energy domestically so that we are not vulnerable to unreasonable price increases or political blackmail by major oil producing countries or their cartels. We live in an interdependent world, but that does not mean that we can afford to become dangerously dependent upon other nations—sometimes unfriendly nations—for the essential elements of our economy.

U.S. Dep't of the Interior, *News Release* 1 (Apr. 10, 1981) [hereinafter *News Release* (Apr. 10, 1981)] (quoting James Edwards, Energy Secretary).

42. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 51 (statement of James G. Watt, Secretary of the Interior). In a statement by Secretary Watt before the House Subcommittee, he explained that the revised OCS program would consist of the following:

First, there will be greater emphasis on early entry into areas of high potential. Here we are talking about the frontier areas of offshore Alaska. We are proposing earlier offerings of four of the five high-potential basins involved.

Second, we propose early reentry into high-potential areas. Spacing between first and second offerings is being decreased from 3 years to 2 years.

Third, we are streamlining the OCS leasing program. This includes proposals for a general reduction in the time needed to hold a lease sale, area-wide environmental and hydrocarbon resource assessments, tiering of NEPA documents, larger lease offerings, and more efficient methods for assuring receipt of fair market value.

The key is streamlining the program, including earlier opening of areas with high potential.

Id. The National Environmental Policy Act is codified at 42 U.S.C. §§ 4321-4370 (1982 & Supp. V 1987).

43. Office of the Secretary, U.S. Dep't of the Interior, *News Release* 1 (July 15, 1981)

A. Accelerated OCS Leasing

Although the Reagan administration's decision to speed up offshore leasing was not the first time the OCS program has been accelerated as part of a national energy program,⁴⁴ the OCS leasing program approved by Secretary Watt was a dramatic departure from past lease schedules.⁴⁵ While the number of OCS lease sales did not significantly increase, rising from thirty-six to forty-one during the five year period, the number of acres offered for leasing rose dramatically. For example, the average sale made by Secretary Andrus was 900,000 acres; under Secretary Watt's plan the average sale was about twenty-four million acres.⁴⁶ Under the Watt accelerated leasing schedule, the Interior Department reviewed almost the entire federal OCS—about one billion acres—for oil and gas leasing during 1982-87.⁴⁷ In contrast, from 1954 through 1980, only forty-one million acres of federal offshore lands were offered for lease and less than half, about nineteen million acres, were actually leased.⁴⁸ The most OCS acreage ever leased in one year was 1.8 million acres in 1979.⁴⁹

[hereinafter *News Release* (July 15, 1981)]. This news release is reprinted in *Hearings on OCS Lease Sales—Part 1*, *supra* note 12, at 572-76.

44. In response to the Arab Oil Embargo of 1973-74, President Nixon announced "Project Independence," a plan by which the United States would seek to become energy self-sufficient by 1980. In April 1973, the President directed the Secretary of the Interior to triple, from one million to three million acres a year, OCS acreage under lease. In January 1974, President Nixon instructed the Interior Department to further accelerate the pace of OCS leasing from three million to 10 million acres, another tripling of the OCS leasing goal in less than one year. H.R. REP. NO. 590, *supra* note 8, at 100, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 1506-07; Comment, *Onshore Impacts of Offshore Drilling: The Police Power Alternative*, 8 SW. U.L. REV. 967 (1976). Some commentators, however, argue that energy independence is an unattainable national goal. See *Debating Self-Sufficiency*, Oil & Gas J., Aug. 13, 1984, at 49. For an informative discussion of United States energy policy since World War II, see Goodwin, *Energy: 1945-1980*, 5 WILSON Q. 55 (1981).

45. *News Release* (July 21, 1982), *supra* note 34, at 1.

46. SIERRA CLUB, THE GREAT GIVEAWAY: PUBLIC OIL, GAS, AND COAL AND THE REAGAN ADMINISTRATION 6 (1982).

47. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 6. "One or more times during the five-year period, all the tracts in each of the 18 Outer Continental Shelf planning areas . . . [were] offered for lease, excepting tracts eliminated for environmental reasons and to accommodate other uses." *News Release* (July 15, 1981), *supra* note 43, at 1. While the Interior Department offered almost one billion OCS acres for oil and gas leasing, Secretary Watt actually hoped to annually lease between five and twelve million acres.

48. ISSUES IN LEASING OFFSHORE LANDS, *supra* note 36, at 22.

49. OFFSHORE INFORMATION & PUBLICATIONS, MINERALS MANAGEMENT SERV., U.S. DEP'T OF THE INTERIOR, OCS REPORT MMS 89-0058, FEDERAL OFFSHORE STATISTICS: 1987, LEASING, EXPLORATION, PRODUCTION & REVENUES 12 (1989) [hereinafter 1987 FEDERAL OFFSHORE STATISTICS].

Not only did the acreage for each sale increase under the Watt plan, but the total annual acreage offered also increased. Past annual offerings ranged from 1.8 million acres in 1977 to 7.7 million acres in 1981. However, 1983 total offerings were approximately 120 million acres and a record 154 million acres were offered in 1984.⁵⁰

The average annual OCS acreage offered and leased had been modest. From 1971 through 1980, about 2.9 million acres of OCS lands were offered for lease and approximately 1.2 million acres were leased.⁵¹ Table 1 shows the total number of OCS acres offered and leased from 1954 through 1987.

Despite the optimistic appraisal of the energy resource potential of OCS lands, in 1980, only one percent of all outer continental shelf acreage was under lease, only 2% had ever been leased, and less than 4% had ever been offered for lease.⁵² The Reagan administration maintained that the only way to determine accurately the amount of recoverable oil and gas in the OCS was to accelerate exploratory drilling in the nation's offshore regions.⁵³ Thus, accelerated leasing would aid in inventorying the wealth of the United States OCS as rapidly as possible.⁵⁴

50. *Id.* at 12.

51. ISSUES IN LEASING OFFSHORE LANDS, *supra* note 36, at 30.

52. OCS Oversight Hearings—Part 2, *supra* note 1, at 15 (statement of W. Kenneth Davis, Deputy Secretary, U.S. Dep't of Energy). Of nearly one billion acres of federal OCS lands, only 45 million were under lease as of December 31, 1987. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 12.

53. Offshore Leasing: Department of the Interior Oversight: Hearings Before the Subcomm. on Environment, Energy, and Natural Resources of the House Comm. on Government Operations, 97th Cong., 1st Sess. 513-14 (1981) [hereinafter *Offshore Leasing Hearings*] (statement of James G. Watt, Secretary of the Interior). Secretary Watt stated:

The peoples of a land cannot understand their resource wealth until the resources have been inventoried and their value and extent is known. With all of America's greatness, we still do not understand our own wealth. We must inventory our lands.

Today we do not know the full extent of our mineral values, our agricultural potential, or our oil and gas reserves. Unfortunately, the only way at this time to inventory our lands to determine the qualities of oil and gas is to drill. Once we have inventoried the lands, we can then make wise decisions with regard to the allocation of wealth that is resident in the land.

Id.

The petroleum industry supports the Reagan administration's efforts to inventory United States offshore hydrocarbon resources. *Accelerated OCS Leasing A Key to Vital Assessment of U.S. Resources*, Oil & Gas J., Aug. 2, 1982, at 45 [hereinafter *Accelerated OCS Leasing A Key to Vital Assessment of U.S. Resources*]. Congress has declared that "there is a serious lack of adequate basic energy information . . . with respect to the availability of oil and natural gas from the Outer Continental Shelf." 43 U.S.C. § 1865(a)(1) (1982).

54. OCS Oversight Hearings—Part 2, *supra* note 1, at 55 (statement of James G.

TABLE 1
OCS ACREAGE OFFERED AND LEASED
1954-87
(million acres)*

Year	Offered (million acres)*	Leased (million acres)*	Bonus Paid for Leases (million dollars)*
1954	1.4	0.5	141.0
1955	0.7	0.4	108.5
1959	0.5	0.2	89.7
1960	1.6	0.7	282.7
1962	3.7	1.9	489.4
1963	0.7	0.3	12.8
1964	1.1	0.6	95.9
1965	0.9	0.1	33.7
1966	0.3	0.1	209.2
1967	1.0	0.7	510.1
1968	1.3	0.9	1,346.4
1969	0.3	0.1	111.7
1970	0.7	0.6	945.1
1971	0.1	0.0	96.3
1972	1.0	0.8	2,251.3
1973	1.5	1.0	3,082.5
1974	5.0	1.8	5,022.9
1975	7.2	1.7	1,088.1
1976	2.8	1.3	2,243.0
1977	1.8	1.8	1,568.6
1978	3.1	1.3	1,767.0
1979	3.4	1.8	5,078.9
1980	2.6	1.1	4,204.6
1981	7.7	2.3	6,653.0
1982	7.6	1.9	3,987.4
1983	119.8	6.6	5,749.0
1984	154.4	7.5	4,037.1
1985	87.0	3.5	1,539.4
1986	58.7	0.7	187.1
1987	59.8	3.4	497.2
TOTAL	538.0	45.0	53,429.8

* rounded figures

Source: Offshore Information & Publications, Minerals Management Serv., U.S. Dep't of the Interior, *Federal Offshore Statistics: 1987, Leasing, Exploration, Production & Revenues* 12 (OCS Report MMS 89-0058, compiled by W. Harris and L. Thurston) (1989).

Watt, Secretary of the Interior). Secretary Watt testified before Congress that the "fundamental purpose of the OCS program is to inventory and ultimately develop the hydrocarbon resources of the Outer Continental Shelf." *Id.* Even under Secretary Watt's increased rate of leasing, it would still take 137 years to evaluate the energy potential of the federal OCS. *Id.* at 370 (statement of Arthur Spaulding, Vice President and General Manager, Western Oil & Gas Ass'n and the Alaska Oil & Gas Ass'n).

B. *Leasing in Frontier Areas*

A major element of the Watt program was early leasing of frontier OCS areas that had a high potential for hydrocarbon discovery, particularly frontier areas off the coast of Alaska.⁵⁵ In a statement by Secretary Watt before a House Subcommittee, the Secretary explained that "[t]here will be greater emphasis on early entry into areas of high potential. Here we are talking about the frontier areas of offshore Alaska."⁵⁶

Through 1982, only 10% of the acreage leased had been in frontier OCS regions outside the producing areas of the Gulf of Mexico and the Santa Barbara Channel.⁵⁷ Furthermore, as of 1980, only 0.6% of Alaska's vast OCS area had been offered for lease, and only 0.2% had ever been leased.⁵⁸ The Watt program, therefore, provided for an overall 17% increase in lease sales over the Andrus Program, with major increases occurring in Alaska.⁵⁹ Planned Alaska sales increased by 60% from ten to sixteen sales. Alaska sales constituted 38% of the total planned program sales, an increase from about 27% observed in the Andrus plan.⁶⁰ Scheduled lease sale dates were also advanced in the higher potential areas.⁶¹

C. *Streamlining the OCS Leasing Program*

"OCS sale preparation is a complex, participative process."⁶² Under the traditional procedures,⁶³ the first important prelease step

55. COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. EMD-82-26, PITFALLS IN INTERIOR'S NEW ACCELERATED OFFSHORE LEASING PROGRAM REQUIRE ATTENTION 11 (1981) [hereinafter PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM]; *The Great Arctic Energy Rush*, BUS. WK., Jan. 24, 1983, at 52-53 [hereinafter *The Great Arctic Energy Rush*].

56. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 51 (statement of James G. Watt, Secretary of the Interior).

57. MINERALS MANAGEMENT SERV., U.S. DEP'T OF THE INTERIOR, FACT SHEET: OUTER CONTINENTAL SHELF FIVE-YEAR LEASING PROGRAM 1 (1982).

58. ISSUES IN LEASING OFFSHORE LANDS, *supra* note 36, at 7. See also *OCS Oversight Hearings—Part 1*, *supra* note 36, at 355-56 (statement of John McKeever, Staff Geologist, Amoco Prod. Co., Alaska).

59. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 6.

60. *Id.* at 6-9.

61. *Id.* at 10-11.

62. *Id.* at 14.

63. For discussions comparing the traditional leasing procedures against the streamlined leasing methods adopted by Secretary Watt, see 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE, *supra* note 13, at 17-22; HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 7; Vass I, *supra* note 35, at 62-64.

was the Call for Nominations issued by the Interior Department that designated certain acreage for leasing consideration.⁶⁴ Industry, coastal states, and other concerned groups then nominated individual tracts to be included or deleted from the lease sale.⁶⁵ Information received in tract nominations was used to make a Tentative Tract Selection of tracts to be considered in a proposed lease sale.⁶⁶ A Draft Environmental Impact Statement (DEIS) was then prepared on these tracts.⁶⁷ The DEIS discussed the likely effects of oil and gas leasing on each OCS tract to be offered,⁶⁸ and additional tracts were deleted if the DEIS showed them to be especially sensitive to environmental damage.⁶⁹

After the DEIS had been circulated for public review and comment, a Final Environmental Impact Statement (FEIS) was written on the same tract-specific basis.⁷⁰ The FEIS provided information to assist the Secretary in deciding whether or not to hold a sale, to delete particular tracts, or to place restrictions on specific tracts.⁷¹ The United States Geological Survey (USGS) then calculated the value of the resources in each tract.⁷² The tracts remaining after this extensive narrowing process were then available to be offered for lease.⁷³ If the Secretary decided to hold the lease sale, a Notice of Sale was published in the Federal Register referring to such matters as the details of the tracts to be leased, measures to avoid adverse environmental impacts, and special stipulations that may be imposed on leasing certain tracts.⁷⁴ The lease sale itself would occur not less than thirty days

64. H.R. REP. NO. 590, *supra* note 8, at 62, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1469; HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 7.

65. *Id.* See also PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 14.

66. *Id.*

67. H.R. REP. NO. 590, *supra* note 8, at 62, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1469.

68. *Id.*

69. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 7.

70. H.R. REP. NO. 590, *supra* note 8, at 63, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1470.

71. *Id.*

72. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 7; PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 14.

73. H.R. REP. NO. 590, *supra* note 8, at 63, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1470.

74. *Id.*

afterwards.⁷⁵ "On the average, these successive procedures took forty-two months to complete."⁷⁶

Secretary Watt approved proposals to streamline the presale planning process. These changes in the OCS leasing system were designed to reduce the planning time of sales, increase the amount of acreage offered in each sale, permit early entry into OCS areas with high energy potential, and utilize market forces rather than the federal government to select areas for offshore leasing exploration.⁷⁷

Streamlining the presale planning process involved substantive changes in the manner in which the Mineral Management Service (MMS) prepared for OCS sales, and in the composition of the sales themselves. It involved "a shift in focus from studying the offering of a relatively small number of scattered tracts to studying the offering of entire planning areas,"⁷⁸ and relied on interest in the marketplace to stimulate lease offerings.⁷⁹ Under the Watt program, potential sales were studied in eight planning areas off the lower forty-eight states and ten areas off Alaska.⁸⁰ These planning areas were based on geologic considerations, and basins were generally grouped together. Each sale involved one planning area.⁸¹

The streamlined leasing program initiated by Secretary Watt introduced three basic changes into the prelease planning process: pre-call activities, Call for Information, and Area Identification.⁸² Precall activities, which take place prior to the Call for Information, include the preparation by the MMS of a geology report, an environmental analysis, an exploration report, and modeling studies concerning so-

75. *Id.* at 64, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 1471.

76. Vass I, *supra* note 35, at 63 (footnote omitted).

77. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 51 (statement of James G. Watt, Secretary of the Interior); *Interior Proposes Final Five-Year OCS Sale Plan*, Oil & Gas J., May 24, 1982, at 44; Edwards, *Reagan Administration Brings New Approach to Federal OCS Leasing*, Oil & Gas J., May 4, 1981, at 203.

78. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 232-33 (statement of J. Robinson West, Assistant Secretary for Policy, Budget & Admin., U.S. Dep't of the Interior); 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE, *supra* note 13, at 17.

79. *OCS Leasing Proposal Keyed to Market Forces*, Oil & Gas J., Feb. 22, 1982, at 56 [hereinafter *OCS Leasing Proposal Keyed to Market Forces*]; *Reagan Energy Policy Plan Tied to Free Market*, Oil & Gas J., July 20, 1981, at 22 [hereinafter *Reagan Energy Policy Plan Tied to Free Market*].

80. News Release (July 21, 1982), *supra* note 34, at 6-7.

81. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 233 (statement of J. Robinson West, Assistant Secretary for Policy, Budget & Admin., U.S. Dep't of the Interior).

82. *Industry Backs Area-Wide Sale of OCS Blocks*, Oil & Gas J., Oct. 18, 1982, at 54 [hereinafter *Industry Backs Area-Wide Sale of OCS Blocks*]; *Interior Fine Tunes Plan for Leasing on OCS*, Oil & Gas J., Jan. 4, 1982, at 73; *Changes in OCS Leasing Procedures Brighten U.S. Outlook Offshore*, Oil & Gas J., May 4, 1981, at 93; Edwards, *supra* note 77.

cioeconomic effects, oil spills, and air quality. Under the Watt program, early submission of geology, exploration and development reports, combined with the areawide offering concept under the streamlined process accelerated the eventual preparation of the DEIS by about twenty-two months.⁸³

The second major change was an increase in private industry involvement during the early stages of the leasing process. Whereas previously Department of the Interior personnel made unilateral determinations as to the areas to be leased, the new process utilizes a Call for Information issued to the private sector inviting comments from potential bidders regarding desirable leasing areas.⁸⁴ Secretary Watt wanted "the market and not the Government [to] decide which tracts are the most promising [for the discovery of oil and gas], and which merit a priority in terms of scarce U.S. investment dollars."⁸⁵ The rationale for areawide offerings was as follows:

[1] Significant domestic energy resources are believed to be located on the OCS, but the precise quantities and locations are unknown because promising frontier areas have not been explored thoroughly.

[2] Different geologists develop different interpretive views on the probable location of oil and gas in any one planning area.

[3] The best way to accelerate discovery of significant oil and gas deposits is to encourage companies to pursue unique and diverse exploration strategies based on these different views.

[4] In the [past] process the Federal Government makes judgments about which tracts are or are not likely to be bid on. The streamlined process will allow companies to concentrate their efforts on tracts they consider most promising, unless those tracts have been deleted for other reasons through the pre-sale planning process.

[5] The diverse exploration strategies which will be tested under the streamlined process are necessary in order to fully test an area. Only a small percentage of a planning area can be expected to contain economically producible resources and it would probably slow the geologic delineation of an area if small portions of it are made available on a piecemeal basis.⁸⁶

83. 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE, *supra* note 13, at 22-29.

84. *Id.* at 19.

85. *Senate Hearings on the Five-Year OCS Leasing Plan*, *supra* note 34, at 14-15 (statement of James G. Watt, Secretary of the Interior). *See also id.* at 11.

86. 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE, *supra* note 13, at 23.

The Interior Department believed that by broadening the range of possibilities from which industry could select to drill, it would expedite the discovery of commercially viable deposits of oil and gas in the OCS.⁸⁷ The petroleum industry supported replacing the Call for Nominations with a Call for Information.⁸⁸

The third major change in the prelease planning process was the substitution of Area Identification for the tentative tract selection process previously used. Area Identification formally announces the area on which the EIS analysis will be focused, and the area which will eventually be considered for leasing. Unlike the tentative tract selection process which focused its EIS analysis on specific individual tracts, the Area Identification process prepares an EIS for the entire planning area.⁸⁹

To accommodate the streamlined leasing process and the new definition of sale area, the Interior Department adopted a different approach to the preparation of environmental impact statements. Essentially it involved two new procedures. The first was "telescoping," which is the simultaneous, rather than successive, execution of certain steps. An example of telescoping is issuing the proposed notice of sale during the same month in which the Final Environmental Impact Statement (FEIS) is issued. The original practice had been to issue the proposed notice of sale two months after the FEIS.⁹⁰ Another element of telescoping includes determining the scope of issues addressed in the EIS. This is called the scoping process and includes the MMS meeting with federal, state, and local governments, as well as other interested parties in order to gather information and to identify the significant issues related to the proposed action. Scoping identifies individual concerns and assists in the formulation of possible alternatives to the proposed action. Under the streamlined procedures, most

87. *Id.* Secretary Watt maintained that the streamlined leasing process "will attract many competitors who will invest millions and billions of dollars in drilling operations that will prove successful in delivering oil and gas to American consumers." *Senate Hearings on the Five-Year OCS Leasing Plan*, *supra* note 34, at 12 (statement of James G. Watt, Secretary of the Interior).

88. *OCS Oversight Hearings—Part 3: Hearings on Provisions of the Proposed Five-Year Leasing Program and Its Impact on Offshore Operations and Examine the GAO Report on the Five-Year Program Before the Subcomm. on the Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 97th Cong., 2d Sess. 129 (1982) [hereinafter *OCS Oversight Hearings—Part 3*] (statement of J. Robinson West, Assistant Secretary for Policy, Budget & Admin., U.S. Dep't of the Interior).

89. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 233 (statement of J. Robinson West, Assistant Secretary for Policy, Budget & Admin., U.S. Dep't of the Interior).

90. *Id.* at 232-33; 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE, *supra* note 13, at 17-18.

of the scoping meetings occur earlier than in past leasing practice and the early receipt of this data shortens the time required to prepare an EIS.⁹¹

The second change in the National Environmental Policy Act (NEPA) process involves the tiering of NEPA documents.⁹² Tiering an EIS eliminates repetitive discussions of the same issues and focuses on the actual issues ripe for decision at each level of environmental review.⁹³ The EIS prepares for the first offering in a planning area, emphasizes analysis rather than description, and provides an assessment of expected cumulative effects of exploration and development activity that might occur within the entire planning area if all the petroleum resources in the planning area are developed. The NEPA document prepared for the second areawide offering updates the EIS from the first offering. Additional information includes results of ongoing environmental studies and monitoring projects; as well as data from any exploration activities that may have taken place.⁹⁴ On the average, these streamlined procedures are completed in about twenty-one months regardless of the leasing area.⁹⁵

As noted, under an areawide leasing system, industry identifies its areas of leasing interest in the Call for Information. The DOI may still exclude tracts from the sale for environmental reasons or by adopting the recommendations of coastal states. However, under the areawide system, industry is permitted greater flexibility to choose where its investments in exploration will be made. The method of resource evaluation is also changed, and the evaluations on the sufficiency of industry bids are made after the sale rather than before.⁹⁶

91. 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE, *supra* note 13, at 19, 22; 40 C.F.R. §§ 1501.7, 1508.25 (1988).

92. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 51 (statement of James G. Watt, Secretary of the Interior); Edwards, *supra* note 77, at 208.

93. 40 C.F.R. §§ 1502.20, 1508.28 (1988).

Whenever a broad environmental impact statement has been prepared (such as a program or policy statement) and a subsequent statement or environmental assessment is then prepared on an action included within the entire program or policy (such as a site specific action) the subsequent statement or environmental assessment need only summarize the issues discussed in a broader statement and incorporate discussions from the broader statement by reference and shall concentrate on the issues specific to the subsequent action.

Id. § 1502.20.

94. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 233 (statement of J. Robinson West, Assistant Secretary for Policy, Budget & Admin., U.S. Dep't of the Interior).

95. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 11.

96. COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, SUBCOMM. ON OVERSIGHT AND INVESTIGATIONS, HOUSE COMM. ON

Industry criticized the tract nomination system because the DOI made its own determinations of resource potential and often refused to include many of the tracts nominated by industry in the sale. Other critics charged that the limited number of tracts in each sale slowed the leasing of OCS lands and depressed OCS production.⁹⁷ Areawide leasing was adopted to provide industry with greater flexibility in selecting the tracts which offer the best potential for commercial discoveries of oil and gas. The objectives are to stimulate the inventorying and production of OCS oil and gas resources by expanding the amount and location of acreage leased and increasing the rate of investment in exploration of OCS lands.⁹⁸

Industry strongly supports the concept of areawide leasing, claiming that its increased participation in the exploration and development activity in the nation's OCS regions is a direct result of areawide leasing.⁹⁹ Areawide leasing provides for creative approaches to offshore exploration. It allows companies to bid on areas that were ignored by

ENERGY AND COMMERCE, PUB. NO. GAORCED-85-66, EARLY ASSESSMENT OF INTERIOR'S AREA-WIDE PROGRAM FOR LEASING OFFSHORE LANDS 1-2 (1985) [hereinafter EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM]; HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 7. For discussions comparing DOI's previous tract selection process to its areawide leasing procedures, see EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra*, at 43-46; 1 FINAL EIS SUPP. ON THE FIVE-YEAR OCS LEASING SCHEDULE, *supra* note 13, at 17-24; HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR LEASING PLAN, *supra* note 4, at 7.

97. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 2.

98. *Id.* at 1; *OCS Leasing Process—Part 1: Hearings on the Five-Year Draft Proposed Program for Oil and Gas Leasing on the Outer Continental Shelf, and the State/Federal Consultation Process Before the Subcomm. on Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 99th Cong., 1st Sess. 84, 457 (1986) [hereinafter *Hearings on OCS Leasing Process—Part 1*] (statement of Patricia E. Hughes, Massachusetts Coastal Zone Management Office).

99. *Outer Continental Shelf Five-Year Program: Hearings on the Five-Year Outer Continental Shelf Oil and Gas Proposed Program Before the Subcomm. on the Panama/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 99th Cong., 2d Sess. 334 (1986) [hereinafter *Hearings on OCS Five-Year Program*] (statement of Dr. Theodore R. Eck, Chief Economist, Amoco Corp.); Hagar, *Gulf of Mexico Area-Wide Sales Draw Kudos from Operators*, *Oil & Gas J.*, Oct. 28, 1985, at 39; *Industry Backs Area-Wide Sale of OCS Blocks*, *supra* note 82. For an industry view on areawide leasing, see NATIONAL OCEAN INDUS. ASS'N, AREA WIDE LEASING: NATIONAL BOON OR INDUSTRY BOONDOGGLE? AN INDUSTRY PERSPECTIVE ON THE FIRST YEAR OF THE OCS AREA-WIDE LEASING PROGRAM IN THE GULF OF MEXICO, (1984), reprinted in *Hearings on OCS Five-Year Program*, *supra*, at 197-212; Kelly, *An Industry Perspective on Areawide Leasing* (remarks presented at the U.S. Dep't of the Interior OCS Policy Committee Meeting, Washington, D.C., Jan. 12, 1984), reprinted in *Outer Continental Shelf: Hearings on Outer Continental Shelf Before the Subcomm. on Energy and the Environment of the House Comm. on Interior and Insular Affairs*, 99th Cong., 1st Sess. 257-65 (1986) [hereinafter *Hearings on OCS*].

others or that were not available under the tract selection system. Over the long term, industry maintains that areawide leasing will result in the location and development of more oil and gas than the tract selection system.¹⁰⁰ Areawide offerings also provide a more efficient means of gathering and using exploration information. The areawide system makes it possible for companies to follow promising geological formations because large areas are available for exploration. The larger the number of exploration opportunities, the greater the chance for new discoveries and the more efficiently scarce capital will be used for exploration.¹⁰¹

The shift from tract nomination to areawide leasing, however, was strongly opposed by environmental groups and coastal states. These groups allege that areawide leasing is nothing more than a "fire sale" and giveaway of the nation's resources, and because of the magnitude of the sales, is a threat to the coastal environment.¹⁰² As a result, the areawide leasing program was subject to unprecedented litigation on a significant number of sales.¹⁰³

II. OPPOSITION TO THE WATT FIVE-YEAR OCS PLAN

The Watt five-year plan for accelerated OCS oil and gas leasing received extensive criticism from coastal states (particularly Massachusetts, Alaska, and California), local governments, environmental-

100. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 121 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on Behalf of the Am. Petroleum Inst.); Hagar, *supra* note 99, at 40-42. *See also* *Areawide Leasing Increases Rig Utilization Rates*, OFFSHORE, Jan. 1985, at 9; *Areawide Offerings are Best Solution*, OFFSHORE, Mar. 1984, at 29; *Gulf Sale Proves Merit of Area Concept*, OFFSHORE, July 1983, at 33; LeBlanc, *Flexure Play Spurs Area-Wide Bidding*, OFFSHORE, July 1983, at 35.

101. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 121 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on Behalf of the Am. Petroleum Inst.).

102. *Id.* at 102 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.), and at 467 (statement of Jack Giberson, Chief Clerk, General Land Office, State of Texas); *Outer Continental Shelf Leasing Activities: Hearing on Outer Continental Shelf Leasing Activities Before the Subcomm. on Energy Conservation and Supply of the Senate Comm. on Energy and Natural Resources*, 98th Cong., 2d Sess. 266 (1984) [hereinafter *Hearing on OCS Leasing Activities*] (statement of Elizabeth Raisbeck, Legislative Director, Friends of the Earth and the Coast Alliance); Crow, *Critical Issues in OCS Activity Could Be Resolved This Summer*, *Oil & Gas J.*, July 2, 1984, at 19-20.

103. *Hearings on OCS*, *supra* note 99, at 407 (statement of Andrew Palmer, Director, Oceans, Coast and Public Lands Project, Env'tl. Policy Inst.); *Hearing on OCS Five-Year Dev. Plan*, *supra* note 4, at 178 (statement of Andrew Palmer, Director, Oceans, Coasts, and Public Lands Project, Env'tl. Policy Inst.); *EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM*, *supra* note 96, at 51.

ists, and citizen groups.¹⁰⁴ These groups expressed five principal concerns about Secretary Watt's accelerated OCS leasing program. First, coastal states and local governments could not cope with such an expansion.¹⁰⁵ Second, the Department of the Interior and the petroleum industry might not have the ability to manage and execute so vast a program.¹⁰⁶ Third, proposals to reduce or eliminate federal funding for ocean and coastal zone management programs, proposed at the same time oil and gas leasing was accelerated, threatened to seriously limit state and local governments' capacity to provide the necessary infrastructure and cope with the impacts of the leasing program.¹⁰⁷ Fourth, environmental assessments would be less useful as planning documents.¹⁰⁸ Finally, the accelerated leasing schedule would not promote leasing at fair market value.¹⁰⁹

A. *The Ability of Coastal States and Local Governments to Cope with Accelerated Leasing*

The pace and magnitude of leasing under the Watt program threatened the ability of coastal states and local governments to cope effectively with such an expansion.¹¹⁰ State and local governments maintained that they were unable to assess adequately the environmental impact of leasing and plan for that impact. They also claimed that they were unable to comment effectively and participate in the

104. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 224-25 (statement of Representative Leon Panetta of California); *Hearing on the Five-Year OCS Leasing Schedule*, *supra* note 4, at 45 (statement of Representative Don Young of Alaska); Crow, *supra* note 102, at 19.

105. Crow, *supra* note 102, at 20.

106. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 38-64.

107. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 146.

108. Crow, *supra* note 102, at 20.

109. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 50.

110. The accelerated OCS lease schedule did "very little to accommodate the legitimate concerns of the State of Alaska." *OCS Oversight Hearings—Part 2*, *supra* note 1, at 457 (letter from Jay Hammond, Governor of Alaska, to James G. Watt, Secretary of the Interior). After reviewing the lease schedule, Governor Hammond commented: "Not surprisingly, the local communities of coastal Alaska are overwhelmed by the proposed acceleration of OCS Leasing in their regions." *Id.* James Souby, Director of Policy Development and Planning for Governor Hammond, testified before Congress that: "Sixteen oil and gas lease sales in 10 Alaskan planning areas totaling more than 550 million acres in the next 5 years are simply too much too soon. Seven of the offshore sales would be first time offerings in Alaskan frontier areas with formidable environmental conditions." *GAO Disputes OCS Revenue Estimate*, Oil & Gas J., June 28, 1982, at 42. See also *OCS Oversight Hearings—Part 2*, *supra* note 1, at 423-56.

preleasing process.¹¹¹

Coastal states sought an increased role in the federal OCS decisionmaking which would vitally affect their interests. Coastal state and local government concerns over the Watt OCS plan produced discussions of a "Seaweed Rebellion"¹¹² comparable to the inland "Sagebrush Rebellion."¹¹³ At a meeting of western governors held in

111. *Hearings on OCS*, *supra* note 99, at 403-04 (statement of Mr. Al Aramburu, County Supervisor, Marin County, California); Crow, *supra* note 102, at 20.

112. *Seaweed Rebellion: States Seek Greater Say in Off-Shore Drilling*, Salt Lake Tribune, Sept. 11, 1981, at 2A, col. 3 [hereinafter *Seaweed Rebellion: States Seek Greater Say in Off-Shore Drilling*].

113. In recent years, the western states have challenged federal ownership of public lands within their boundaries through the introduction of "Sagebrush Rebellion Acts" in state legislatures. These legislative proposals would shift the ownership of public lands from the federal government to the states. Such legislation was considered in the following states: Arizona, California, Nevada, New Mexico, Utah, Washington, and Wyoming. Similar legislation has also been filed in the United States Senate. Backman, *Public Land Law Reform—Reflections from Western Water Law*, 1982 B.Y.U. L. REV. 1, 5-6.

Western states recognize that the federal government's most direct impact on their future arises from its position as the owner and steward of about 733 million acres of publicly-owned land, one-third of the land area of the United States. The majority of federal land ownership is in 12 western states. The percent of land owned by the federal government within these states is as follows: Alaska, 86%; Arizona, 44%; California, 48%; Colorado, 36%; Idaho, 64%; Montana, 30%; Nevada, 85%; New Mexico, 34%; Oregon, 49%; Utah, 61%; Washington, 31%, and Wyoming, 50%. BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF THE INTERIOR, PUBLIC LAND STATISTICS 1986 5 (1987).

Within these federal lands are significant amounts of natural resources. Federal lands contain 85% of the nation's oil, 72% of oil shale, 37% of the natural gas, 37% of the uranium ore, and 50% of geothermal resources. CONGRESSIONAL RESEARCH SERV., LIBRARY OF CONG., 96TH CONG., 2D SESS., THE ENERGY FACTBOOK 58 (1980); *Reagan Energy Policy Plan Tied to Free Market*, *supra* note 79, at 22. While federal lands contain significant amounts of fossil fuels, production of these resources has been modest. The percentages of fossil fuel production on federally administered lands as a percent of total United States production for the year 1986 were as follows: crude oil, 19.2%; natural gas, 30.4%; and coal, 22.8%. OFFICE OF ENERGY MARKETS AND END USE, ENERGY INFORMATION ADMIN., U.S. DEP'T OF ENERGY, ANNUAL ENERGY REVIEW 1988 17 (1989) [hereinafter 1988 ANNUAL ENERGY REV.].

The United States is not the only country facing challenges to federal control over energy resources. Canada also faces the issue of whether control of domestic oil and gas development should be centered at the local or national level. For a discussion of the Canadian "snowshoe" rebellion, see Nagy, *Sagebrush and Snowshoes: The Struggle for Natural Resource Control in the United States and Canada*, 44 LAW & CONTEMP. PROBS. 247 (1981). For discussions on the Sagebrush Rebellion, see *Nevada v. United States*, 699 F.2d 486 (9th Cir. 1983); Babbitt, *Federalism and the Environment: An Intergovernmental Perspective on the Sagebrush Rebellion*, 12 ENVTL. L. 847 (1982); Brodie, *A Question of Enumerated Powers: Constitutional Issues Surrounding Federal Ownership of the Public Lands*, 12 PAC. L.J. 693 (1981); Coggins, *The Law of Public Rangeland Management I: The Extent and Distribution of Federal Power*, 12 ENVTL. L. 535 (1982); Getches, *Managing the Public Lands: The Authority of the Executive to Withdraw Lands*, 22 NAT. RESOURCES J. 279 (1982); Leshy, *Unraveling the Sagebrush Rebellion: Law, Politics and Federal Lands*, 14 U.C. DAVIS L. REV. 317 (1980); Mollison & Eddy, Jr., *The Sagebrush*

September 1981, Governor Jay Hammond of Alaska commented that the federal policy of offshore leasing appeared to be "a reduction of states' rights under the so-called 'New Federalism'" which demonstrated "undue and unnecessary insensitivity" to coastal states.¹¹⁴ Governor Hammond claimed that "unless [the OCS leasing schedule was] amended [it] could do severe violence to those of us who live in [those] coastal areas."¹¹⁵ In a letter to the Interior Department, he asserted that "the State of Alaska is firmly opposed to both the magnitude and pace of leasing proposed for the Alaska OCS region. . . ."¹¹⁶ Governor Hammond further stated that "Alaskans are being asked to shoulder an inequitable portion of the risks and impacts inherent in oil and gas activities conducted in hazardous offshore waters."¹¹⁷

Critics raised a number of specific objections to accelerated leasing in offshore Alaska. The state has little of the social and governmental infrastructure found in other areas of the United States that are subject to OCS development¹¹⁸ and did not have sufficient time under the accelerated OCS lease schedule to plan and provide for needed facilities and social services. The leasing program proposed by Interior Secretary Andrus provided an average planning time of twenty-six months for sales in the Gulf of Mexico and up to forty-one months for sales in Alaska.¹¹⁹ These time frames reflected not only the different environmental characteristics of the two offshore regions, but also their differing degrees of infrastructure development. Under the Watt leasing program, however, sale planning steps were completed in about twenty-one months in both regions.¹²⁰

The state of California also opposed the accelerated OCS leasing

Rebellion: A Simplistic Response to the Complex Problems of Federal Land Management, 19 HARV. J. ON LEGIS. 97 (1982); Titus, *The Nevada Sagebrush Rebellion Act: A Question of Constitutionality*, 23 ARIZ. L. REV. 263 (1981); Wald & Temkin, *The Sagebrush Rebellion: The West Against Itself—Again*, 2 UCLA J. ENVTL. L. & POL'Y 187 (1982); Note, *The Property Power, Federalism, and the Equal Footing Doctrine*, 80 COLUM. L. REV. 817 (1980); Note, *The Sagebrush Rebellion: Who Should Control the Public Lands?*, 1980 UTAH L. REV. 505.

114. *Seaweed Rebellion: States Seek Greater Say in Off-Shore Drilling*, *supra* note 112, at 2A, col. 3.

115. *Id.*

116. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 457 (letter from Jay Hammond, Governor of Alaska, to James G. Watt, Secretary of the Interior).

117. *Id.*

118. *Id.* at 275 (statement of Barbara Heller, Consultant, Env'tl. Policy Center).

119. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 11, 13. The leasing program under Secretary Andrus provided for 30 months to plan for a sale in the Pacific OCS region and 31 months for planning Atlantic OCS region sales. *Id.* at 13.

120. *Id.* at 11, 13.

program, particularly lease sale number fifty-three in the Santa Maria Basin.¹²¹ The proposed drilling there would occur near four of northern California's most beautiful beaches, but would only produce a ten-day national supply of petroleum.¹²² As a result, congressional and other political sources also opposed the direction of the OCS leasing program in California.¹²³ On March 19, 1981, twenty-nine members of the California congressional delegation wrote to President Reagan

121. *California v. Watt*, 520 F. Supp. 1359 (C.D. Cal. 1981), *aff'd in part and rev'd in part*, 683 F.2d 1253 (9th Cir. 1982), *rev'd sub nom Secretary of the Interior v. California*, 464 U.S. 312 (1984).

122. *Offshore Leasing Hearings*, *supra* note 53, at 373. The United States Geological Survey estimated that Sale No. 53 had a potential of 983 million barrels of petroleum. Opponents of the sale maintained that this amount did not justify the environmental risks of offshore drilling. *Id.* Industry, however, displayed unusual interest in the petroleum potential of the Santa Maria Basin. The sale drew \$2.278 billion in high bids. Among the offers was one that established a record at that time for the biggest bonus for a single tract as well as the highest per-acre bonus. Rintoui, *California's Staggering Sale*, *OFFSHORE*, July 1981, at 57.

Phillips Petroleum Company and Chevron U.S.A., a subsidiary of Standard Oil Company of California, paid a record for that date of \$333.6 million for the right to drill for oil on a single 5700-acre offshore tract in the Santa Maria Basin off Point Arguello, California. Test drilling in the Santa Maria Basin confirmed the existence of a major oilfield, and experts now predict that the Santa Maria Basin could be the largest single American oil discovery since Alaska's Prudhoe Bay in 1968. Originally the field's potential reserves were estimated at 100 million barrels of oil. Since the test drilling, however, projections have risen to put the ultimate potential between 300 million and one billion barrels of oil. *A Billion-Barrel Find?*, *NEWSWEEK*, Nov. 29, 1982, at 84; *Black-Gold Rush*, *TIME*, Nov. 29, 1982, at 63.

123. The controversy generated over including the Santa Maria Basin in OCS lease offerings is illustrated by the remarks of California Congressman John Burton, who referred to Mr. Watt in congressional hearings as "the Secretary of the Inferior." *OCS Oversight Hearings—Part 1*, *supra* note 36, at 9. Congressman Burton further stated:

So it is obvious that lock, stock and barrel [Secretary Watt] is in the pocket of the oil industry, he is going to destroy the fishing industry in our area, he is going to destroy the ecology of our area, and he is going to do it all in the name of—I do not know what, but I am sure he can think of something.

I think it is outrageous exploitation. . . .

Id. at 10.

California Congressman Paul McCloskey, however, questioned the environmentalist's perspective on opposing the lease sale:

[T]he protection of one of the most beautiful coastlines in the world is important, but just as serious is the national need to avoid the necessity of going to war in the Persian Gulf. . .

. . .

. . . I want to confess that in comparing these two perspectives the desire to prevent going to war in the Middle East and to prevent spending an additional \$38 million in increased defense expenditures, outweighs the possibility of having to say as a Representative from California, yes, we are willing to go to war to protect our source of oil, but we are not willing to drill off our own coast because of a desire to protect our own environment. The standard environmentalist's perspective on the lease-sale seems a little hollow unless we have clear evidence that

asking him to overturn Secretary Watt's action and exclude four northern California basins—Eel River, Point Arena, Bodega, and Santa Cruz—from OCS leasing.¹²⁴ Senator Alan Cranston, a California Democrat, called for Watt's resignation, and the Republican Party Chairman of California, Mr. Tirso del Junco, warned Secretary Watt in a June 1, 1981 letter that a decision to open up certain offshore reserves along the coast of California for oil and gas drilling could "severely hamper" the election of Republican candidates in California.¹²⁵

Opponents of Secretary Watt's plan to lease California's OCS were concerned about the environmental impacts of nearshore development.¹²⁶ The majority of California's OCS, particularly in southern California, drops rapidly from the coast reaching a depth of 350 meters at an offshore distance of approximately twelve miles. Any federal OCS development must occur very close to shore because present

the danger of drilling represents a real danger of environmental damage to the coast.

Offshore Leasing Hearings, *supra* note 53, at 5-6 (statement of Representative Paul McClosky of California).

Wallace Stokes, a private citizen, also challenged the environmentalists' view of OCS development of the California coast. He stated before a House subcommittee on OCS oversight:

Individuals and representatives of organizations have appeared before you today representing almost every creature of the deep in California's vast off-shore inventory of sea life, but who has spoken for man? We speak of protecting man's environment and yet ignore the fact that man is a social being. An economics guided and energy-consuming creature that is a very important component of the world's total environment.

Today I appear before you as a private citizen attempting to speak for man, particularly the sector of our citizenry who are the urban poor.

On behalf of the urban poor, Mr. Stokes stated:

It is all well and good for those coastline residents to express concerns for preservation of the unique beauty and environment, but it is of little value and absolutely no help to that automobile worker in Milpitas thrown out of a job because of rising energy costs. We can talk about environmental protection for the whale, but it doesn't address the very real human need of the San Francisco Tenderloin resident and her inability to maintain an adequate diet because of escalating energy costs.

.....
Assuming for the moment that the USGS estimates are correct, the oil in leasehold 53 is projected to make 10,000 jobs. Can we neglect this impact on [the] unemployed in this Nation?

Offshore Leasing Hearings, *supra* note 53, at 434-35 (statement of Mr. Wallace Stokes).

124. *OCS Oversight Hearings—Part 1*, *supra* note 36, at 8-9 (statement of Representative John Burton of California).

125. 12 Env't. Rep. (BNA) 247 (June 19, 1981).

126. *Hearing on OCS Leasing Activities*, *supra* note 102, at 58-61 (statement of Senator Pete Wilson of California).

technology limits drilling to areas less than 350 meters in depth.¹²⁷

California coastal communities voiced three concerns about near-shore OCS development. First, the risk of an oil spill could have a devastating effect on the economies of coastal communities that in large part depended on the fishing, recreation, and tourist industries.¹²⁸ A second concern with nearshore development was increased air pollution.¹²⁹ Since the prevailing winds off southern California are onshore, nearshore development would increase air pollution.¹³⁰ Coastal communities, already violating the Clean Air Act, objected to nearshore OCS drilling because the increase in pollution levels would result in stricter air quality control standards and growth restrictions.¹³¹ The final concern with nearshore OCS development was visual pollution.¹³² Oil platforms located twelve to fifteen miles off the coast were offensive to residents of coastal communities and would reduce property values and hinder the tourism business.¹³³

Opponents of the Watt leasing plan also maintained that as the third largest oil producing state in the nation, California already contributed its share to national energy needs.¹³⁴ The amount of oil to be

127. *Id.* at 58.

128. *Id.* at 58-59.

129. *Id.* at 60.

130. *Id.*

131. "According to the California Air Resources Board, the emissions associated with one exploratory drilling operation are equivalent to 5,000 1982 passenger cars traveling 50 miles per day for one year." *Id.*

132. *Id.* at 61.

133. *Id.*; *Energy and National Security—5, U.S. Must Balance Its Environmental, Energy Concerns*, Oil & Gas J., Feb. 16, 1987, at 27. The objections of California coastal communities to the visual pollution of oil rigs illustrates the regional differences to domestic oil development. The Gulf States, particularly Louisiana and Texas which have experienced the majority of OCS drilling assert that Californians "perceive . . . OCS energy development to be the same . . . as waste disposal, a necessary obligation but preferably done in someone else's backyard." *Hearing on OCS Five-Year Dev. Plan*, *supra* note 4, at 2. See also *Hearing on OCS Leasing Activities*, *supra* note 102, at 29, *Miscues Add New Twists to Saga of Oil, Gas Work off California*, Oil & Gas J., Sept. 22, 1986, at 15. The Gulf States complain that Californians want to live their lives without producing for the rest of the country any of the products that they enjoy consuming and that is not fair. *Hearing on OCS Leasing Activities*, *supra* note 102, at 29; *Hearings on OCS*, *supra* note 99, at 102; *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 25.

The California approach to visual pollution—because you do not like the way a drilling rig looks, you do not drill—is not a rational solution to the problem. The nation needs to determine whether there are recoverable reserves in the federal OCS and an accurate inventory can only be made by drilling. *Hearings on OCS*, *supra* note 99, at 95.

134. *Hearing on OCS Leasing Activities*, *supra* note 102, at 46-47, 56, (statement of Senator Pete Wilson of California); *Hearings on OCS*, *supra* note 99, at 103. Opponents of leasing California's OCS claim that the relatively small amounts of oil to be discovered do not justify the risks of development. California's OCS will most likely not provide enough

recovered in the OCS areas of California might be significant to a single leasing company, but leasing opponents claimed that there did not appear to be enough oil to justify taking the risks of development.¹³⁵ In this case, the state of California, environmentalists, and citizen groups claimed that the nation's energy needs did not outweigh the potential disaster to local interests that OCS development could bring.¹³⁶

In response to California's argument that the environmental risks of offshore drilling were too great for the amount of petroleum to be found in California's OCS, Secretary Watt replied that the risks were extremely limited and "directly associated with the quantity of oil found. Small or no discoveries of oil result in virtually no risk. A theoretically higher risk would occur only if larger quantities of oil are found. And if that is the case, the value of production to the Nation substantially increases."¹³⁷

Secretary Watt maintained that a far bigger danger to the coastal environment than the development of OCS energy resources was the risk of oil spills from giant tankers carrying foreign oil to the United States.¹³⁸ The Secretary also pointed out that California conducted

petroleum to satisfy the nation's oil needs through the end of the century, the end of the decade, or even through one year, nor will it free the country from dependence on foreign oil. *Hearing on OCS Leasing Activities*, *supra* note 102, at 55 (statement of Senator Pete Wilson of California).

135. *Hearing on OCS Leasing Activities*, *supra* note 102, at 47, 54 (statement of Senator Pete Wilson of California).

136. *Id.*; *Department of the Interior and Related Agencies Appropriations for 1986—Part 5: Hearings of the Testimony of Public Witnesses, Energy and Related Programs, Before the Subcomm. on the Department of the Interior and Related Agencies of the House Comm. on Appropriations*, 99th Cong., 1st Sess. 30-32 (1985) [hereinafter *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 5*] (statement of Tom Bradley, Mayor, City of Los Angeles, California); Crow, *supra* note 102, at 20.

137. *Offshore Leasing Hearings*, *supra* note 53, at 516-17 (statement of James G. Watt, Secretary of the Interior). Secretary Watt summarized the debate over leasing OCS lands off the coast of California in the following manner:

Those opposing sale 53 have tried to cast the issue as one of either oil and gas, or other important values. Experience in the Gulf of Mexico in Federal and State waters, and off southern California in Federal and State waters, shows that it is not an either/or question. Offshore oil and gas is compatible with other uses and values of the ocean.

Id. at 516-17.

138. U.S. NEWS & WORLD REP., May 25, 1981, at 49; *OCS Oversight Hearings—Part 2*, *supra* note 1, at 50 (statement of James G. Watt, Secretary of the Interior). Oil imports by massive tankers into the United States are more of a threat to our coastal environment than spillage from OCS production. The OCS program is the nation's safest energy extraction program. Of the 60 largest oil spills recorded in American waters, 59 were caused by tanker spills; only one was the result of OCS oil and gas activity. During the last decade, OCS-related oil spills totaled 84,000 barrels. In contrast, just one recent tanker

numerous lease sales within state waters at the same time it opposed federal OCS lease sales.¹³⁹ He further noted that California is the large-

spill involving the British tanker ALVENUS spilled 30,000 barrels of oil into the Gulf of Mexico. *OTA Report: Hearing on a Report by the Office of Technology Assessment: "Oil and Gas Technologies for the Arctic and Deepwater" Before the Subcomm. on Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 99th Cong., 1st Sess. 29 (1985) [hereinafter *Hearing on OTA Rep.*] (statement of Representative Jack Fields of Texas); *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 4-5 (statement of Representative Jack Fields of Texas). This one tanker incident dumped more oil into United States waters than the total oil discharged by all OCS activities during the eight year period from 1976 through 1983. During this period, oil spills from tankers caused 21 times as much pollution as all energy development activities on the OCS. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 86.

The success of the OCS safety record is illustrated by the fact that in the last decade an average of five barrels of oil were spilled for every one million barrels produced on the OCS. *Hearing on OTA Rep.*, *supra*, at 29 (statement of Representative Jack Fields of Texas). In 1985, only 1600 barrels of oil were spilled nationwide as a result of OCS energy activity. Oil production in that year was almost 400 million barrels. *Hearing on OCS Five-Year Dev. Plan*, *supra* note 4, at 125-26 (statement of Donald P. Hodel, Secretary of the Interior).

The threat of oil spills is the single major fear from leasing California's OCS. However, the total oil spilled in California's offshore waters from OCS operations from 1970 through 1987 is only 210 barrels. That compares with discharges into California's OCS waters of about one million barrels of oil and grease from the Los Angeles treatment plant, five million barrels from San Luis Obispo to San Diego, and two million barrels from natural seeps during that period. *Department of the Interior and Related Agencies Appropriations for 1988—Part 9: Hearings on the Department of the Interior Budget for Fiscal Year 1988 Before the Subcomm. on the Department of the Interior and Related Agencies of the House Comm. on Appropriations*, 100th Cong., 1st Sess. 685-86 (1987).

In an extensive study on the effects of offshore oil and natural gas development on the coastal zone, the Congressional Research Service concluded that "offshore OCS production will be less damaging to the environment than importing a like amount of petroleum." CONGRESSIONAL RESEARCH SERV., LIBRARY OF CONG., 94TH CONG., 2D SESS., A STUDY ON THE EFFECTS OF OFFSHORE OIL AND NATURAL GAS DEVELOPMENT ON THE COASTAL ZONE 1 (1976) [hereinafter EFFECTS OF OFFSHORE OIL AND NATURAL GAS DEV. ON THE COASTAL ZONE]. The Congressional Research Service stated:

Most oil pollution in the oceans comes from vessels, especially tankers, and from waste oil in municipal and industrial effluents. A five-percent reduction in oil pollution from either of these sources would have a more positive impact on the marine environment than elimination of *all* offshore production. Transportation (tankers primarily) contributes an estimated 35 percent of all ocean oil pollution. River and urban runoff contributes 31 percent, and offshore production 1.3 percent.

Id. at 1.

139. *Final Five-Year Plan for Oil and Gas Development in the Outer Continental Shelf: Hearings to Review the Secretary of the Interior's Proposed Five-Year Plan for Oil and Gas Development in the Outer Continental Shelf Pursuant to the Outer Continental Shelf Lands Act Amendments of 1978 Before the Subcomm. on Energy Conservation and Supply of the Senate Comm. on Energy and Natural Resources*, 97th Cong., 2d Sess. 21 (1982) [hereinafter *Senate Hearings on the Five-Year OCS Leasing Plan*] (statement of James G. Watt, Secretary of the Interior). See also *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 5*, *supra* note 136, at 30-32 (statement of Tom Bradley, Mayor, City of Los Angeles, California), and at 188-92 (statement of Robert Moeller, President, Yolo

est gasoline consuming state in the nation, and therefore has a responsibility to meet its own consumer petroleum needs as well as contribute to the energy supply of the country.¹⁴⁰ The controversy over leasing California's OCS, therefore, was "the classic example of the broad public interests versus local interests and, as is often the case, local concerns do not always reflect national or even regional needs."¹⁴¹

Interior officials maintained that if the United States were "to operate on a principle that every time you drill a well it has to carry the potential of carrying the entire Nation for months on end, there would be no drilling . . . at all."¹⁴² The nation's supply of petroleum comes from thousands of leases across the country, each contributing its own share of petroleum production. Exempting offshore tracts from OCS development has reduced employment opportunities¹⁴³ and resulted in

County Farm Bureau) (California is the largest agricultural state in the nation, and its agricultural production is dependent upon abundant energy supplies); *Each Stalled OCS Sale a Missed Chance for a More Secure U.S. Energy Future*, Oil & Gas J., Jan. 10, 1983, at 21 [hereinafter *Each Stalled OCS Sale a Missed Chance for a More Secure U.S. Energy Future*].

Secretary Watt stated in congressional testimony that:

While criticizing us, California has been properly issuing hundreds of drilling permits within State waters. In fact, since 1979, Governor Brown has been issuing offshore oil drilling permits in the Santa Barbara Channel. It must be remembered that the California leases are within three miles of the coastline and the beaches. The State's activities are what you see; the Federal activities affect the lands far out under the ocean waters.

Senate Hearings on the Five-Year OCS Leasing Plan, *supra* note 34, at 21 (statement of James G. Watt, Secretary of the Interior).

140. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 56 (statement of James G. Watt, Secretary of the Interior). See also *Hearing on OCS Five-Year Dev. Plan*, *supra* note 4, at 69. California is the third largest user of gasoline in the world, exceeded only by the United States and the Soviet Union. *Hearing on OCS Five-Year Dev. Plan*, *supra* note 4, at 69, 168. This oil dependence is largely due to a lifestyle built on the automobile. Californians consume more fuel per person than any other state in the nation. *Hearings on OCS*, *supra* note 99, at 102-03. In fact, the California Energy Commission predicts that by 1991, the state's transportation sector alone will consume more oil than the entire nation produces. *Hearing on OCS Five-Year Dev. Plan*, *supra* note 4, at 168 (statement of Representative Daniel Lungren of California).

141. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 51 (statement of James G. Watt, Secretary of the Interior). Secretary Watt's argument that special interest groups are primarily responsible for the opposition to leasing California's OCS is supported by a 1983 state-wide survey of voters in which 56% of the population polled favored new OCS development off the coast of California. *Hearings on OCS*, *supra* note 99, at 450.

142. *Offshore Leasing Hearings*, *supra* note 53, at 373.

143. *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 5*, *supra* note 136, at 196 (statement of Marilyn Quinn, Youth for Energy Independence), at 221-22 (statement of Larry Luera, California Chapter of the League of United Latin Am. Citizens), and at 231-32 (statement of Donald C. Cobb, Vice President, Black Business Ass'n of Los Angeles).

the steady decline of oil production from OCS lands.¹⁴⁴ Annual OCS oil production declined from 418 million barrels of oil in 1971 to 277 million barrels in 1980, a 33% decrease.¹⁴⁵ Secretary Watt, therefore, claimed that the national interest involved in developing offshore oil and gas reserves went beyond state objections to offshore drilling under the Department of the Interior's OCS program.¹⁴⁶

B. Department of the Interior's Ability to Manage the Accelerated OCS Program, and Industry's Capacity to Explore One Billion Offshore Acres

A second concern with Secretary Watt's five-year leasing plan was the Department of the Interior's ability to manage the accelerated OCS program and the petroleum industry's capacity to explore one billion offshore acres.

1. The DOI's ability to manage the accelerated OCS program

The Outer Continental Shelf Lands Act Amendments of 1978 (OCSLAA) requires the Department of the Interior to estimate for Congress the money and full-time permanent positions needed to support a revised or new leasing schedule.¹⁴⁷ The Interior Department estimated that it could administer the accelerated leasing program with forty-two million dollars less than was estimated in the June 1980 lease schedule prepared by Secretary Andrus (a 5.6% reduction) and with 948 fewer full-time positions (an 11% reduction). While reducing its budget and staff, the Interior Department offered more offshore acreage through accelerated OCS lease sales than it had in the past,

144. *OCS Oversight Hearings—Part 2, supra* note 1, at 234 (statement of J. Robinson West, Assistant Secretary for Policy, Budget & Admin., U.S. Dep't of the Interior).

145. *Id.* at 234, 239.

146. *Id.* at 56 (statement of James G. Watt, Secretary of the Interior); *Offshore Leasing Hearings, supra* note 53, at 517 (statement of James G. Watt, Secretary of the Interior). Secretary Watt explained:

The overriding national interest dictates that the OCS exploration program be carried on. We must know the resources at hand. This is recognized by congressional action and by statute. The criticism raised to date simply does not balance the very small risks as compared to potential value of the likely production. Sale 53 is a step in implementing the intent of Congress to meet the overriding national need to increase domestic oil and gas production. There can be no increase in production until we know if it is there.

Id. at 517. *See also OCS Oversight Hearings—Part 2, supra* note 1, at 64 (statement of James G. Watt, Secretary of the Interior); *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 5, supra* note 136, at 230 (statement of Donald C. Cobb, Vice President, Black Business Ass'n of Los Angeles); *Each Stalled OCS Sale a Missed Chance for a More Secure U.S. Energy Future, supra* note 139, at 21.

147. 43 U.S.C. § 1344(b) (1982).

primarily in frontier areas. The Interior Department did not explain how the simultaneous reductions in program funding and staffing and implementation of the accelerated leasing schedule would be accomplished.¹⁴⁸

The U.S. Comptroller General questioned the adequacy of DOI's funding and staffing estimates. In the opinion of the Comptroller General, given the accelerated leasing program, funding and staffing needs for the OCS program would exceed current projections if the program goals were to be achieved.¹⁴⁹

2. *The petroleum industry's capacity to increase exploration for offshore energy resources*

Citizen groups also questioned the extent of the petroleum industry's capacity to explore and develop the vast quantities of new OCS acreage offered under the accelerated program.¹⁵⁰ The history of OCS development shows that the petroleum industry has been, and probably will continue to be, slow in developing the offshore lands it leases.¹⁵¹ A 1981 report by the Energy Action Foundation, surveying the worldwide lease holdings and production rates of twenty major oil companies, found that the companies increased their holdings of undeveloped oil and gas lands by over 43% from 1976 to 1980, but increased their acreage in production by only 2.5%. In 1976, the twenty major oil companies had twenty-four acres in production for every 100 acres held inactive. In 1980, the number of acres in production had declined to seventeen for every 100 acres leased but not producing.¹⁵² As of 1981, the oil industry had leased only 3% of the Alaska, California, and Atlantic OCS land initially considered for lease, and many tracts that the industry did not explore and develop were returned to the federal government.¹⁵³

148. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 38, 40.

149. *Id.* at 43.

150. OCS Oversight Hearings—Part 2, *supra* note 1, at 224 (statement of Representative Leon Panetta of California).

151. *Fair Warning*, Oil & Gas J., Aug. 10, 1987, at 17.

152. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 62.

153. R. TINNEY, OFFSHORE PETROLEUM EXPLORATION: CAPABILITIES AND CONSTRAINTS 5 (1981) (prepared for the Center for Envtl. Educ.), reprinted in *Hearings on OCS Lease Sales—Part 1*, *supra* note 12, at 513-71. The Comptroller General, however, concluded that the petroleum industry has been diligent in exploring and developing leased lands. COMPTROLLER GENERAL, GENERAL ACCOUNTING OFFICE, PUB. NO. EMD-81-48, REPORT TO THE CONGRESS: IMPACT OF REGULATIONS—AFTER FEDERAL LEASING—ON OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT 41-47 (1981). See

Few studies analyzed the petroleum industry's capacity to handle the accelerated leasing program. Furthermore, the Department of the Interior saw no need for such studies. Secretary Watt maintained that the availability of OCS lease offerings should not be determined by the industry's capabilities.¹⁵⁴ Nevertheless, a report for the Center for Environmental Education (CEE) concluded that accelerated OCS development will be constrained by a shortage of available mobile offshore drilling rigs, a lack of qualified personnel, the limits of oil and gas technology, and a shortage of capital.¹⁵⁵ According to the CEE report, the offshore oil and gas industry did not have the capacity to explore and develop the OCS lands offered under the accelerated leasing program.¹⁵⁶

The General Accounting Office (GAO), however, criticized the CEE findings. The GAO concluded that the petroleum industry was fully capable of increasing its offshore activities, although the exact level of the increased activity was uncertain. It maintained that the level of increased participation depended upon the economics of oil development and the predictability of the leasing schedule rather than

also Government Charges of Operator Footdragging on Federal Leases Exposed as False Issue, Oil & Gas J., Sept. 27, 1982, at 107; GAO: *Industry Diligent on Federal Leases*, Oil & Gas J., Sept. 27, 1982, at 129.

There are 117,000 oil and gas leases on federal onshore lands totaling 100 million acres but only six million acres are in production. Furthermore, between 75% and 80% of federal onshore leases expire without the submittal of drilling proposals. *OCS Oversight Hearings—Part 1*, *supra* note 36, at 7 (statement of Representative John Burton of California). Congressional opponents of the Watt OCS program questioned the rationale of accelerated leasing when oil companies were not fully developing leases. It was pointed out that "there [were] nearly 700 leases held by oil companies on Federal OCS lands totaling 3.5 million acres with no drilling being conducted in those areas." *Id.* The OCSLA Amendments prohibit the issuance of a lease if the bidder is not meeting due diligence requirements on other OCS leases. The Act states: "No bid for a lease may be submitted if the Secretary finds, after notice and hearing, that the bidder is not meeting due diligence requirements on other leases." 43 U.S.C. § 1337(d) (1982). For a discussion on the diligence of industry exploration of federal onshore oil and gas leases, see U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. GAO/EMD-82-82, ARE LEASEHOLDERS ADEQUATELY EXPLORING FOR OIL AND GAS ON FEDERAL LANDS? (1982).

154. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 55.

155. R. TINNEY, *supra* note 153, at 5.

156. *Id.* at 46. The Watt accelerated program was not the first time that industry's capacity to explore expanded OCS leasing was questioned. Studies by the Federal Energy Administration and the National Petroleum Council concluded that industry lacked the capacity to respond to the Interior Department's proposal to lease 10 million OCS acres in 1975. NATIONAL OCEAN POLICY STUDY, 94TH CONG., 1ST SESS., AN ANALYSIS OF THE DEPARTMENT OF THE INTERIOR'S PROPOSED ACCELERATION OF DEVELOPMENT OF OIL AND GAS ON THE OUTER CONTINENTAL SHELF 6 (1975) [hereinafter NAT'L OCEAN POL'Y STUD.].

on the magnitude of OCS lease offerings.¹⁵⁷ The offshore petroleum industry also claimed that it had the capacity to increase its activities to meet the accelerated leasing schedule.¹⁵⁸

C. *Funding for Ocean and Coastal Programs*

In fiscal year 1982, at the same time the Interior Department was vastly accelerating OCS oil and gas leasing,¹⁵⁹ the Reagan administration proposed the elimination of federal funding for state implementation of the Coastal Zone Management (CZM) program,¹⁶⁰ the Coastal Energy Impact (CEI) program, and the National Sea Grant (NSG) program.¹⁶¹ This funding provides grants and loans to mitigate the adverse impact of coastal energy development.¹⁶²

The Reagan administration attempted to justify the proposed budget cuts on several grounds. First, the administration argued that federal CZM assistance had largely fulfilled its intended purpose—to help states develop and implement CZM programs—with twenty-five approved state programs covering 78% of the coastline. Thus, states should now be expected to fully fund the program that manages their coastal zones. Second, since many of the state CZM programs had been in existence for several years and were an integral part of the states' overall environmental protection activities, they were unlikely to be abandoned because of the withdrawal of federal funding.¹⁶³ Third, economic growth resulting from energy resource development on federal lands—either onshore or offshore—should create new tax bases which would, in the long run, compensate for associated impacts. Fourth, the federal government still provided funding for community facilities and services through a wide variety of categorical and block grant programs—for instance, community development and sewage treatment plant construction grants from the Environmental Protection Agency. States and their political subdivisions had the op-

157. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 50. See also *id.* at 50-64.

158. OCS Oversight Hearings—Part 3, *supra* note 88, at 33 (statement of E. A. Wardwell, Chairman, Nat'l Ocean Indus. Ass'n); *id.* at 39 (statement of Paul Kelly, Corporate Vice President, Zapata Corp., on behalf of the Int'l Ass'n of Drilling Contractors); OCS Oversight Hearings—Part 2, *supra* note 1, at 363-69 (statement of Charles Matthews, President, Nat'l Ocean Indus. Ass'n).

159. OCS Oversight Hearings—Part 1, *supra* note 36, at 36 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

160. See 16 U.S.C. §§ 1451-1464 (1988).

161. See 33 U.S.C. §§ 1121-1131 (1982 & Supp. V 1987).

162. OCS Oversight Hearings—Part 2, *supra* note 1, at 146; Chasis, *The Coastal Zone Management Act: A Protective Mandate*, 25 NAT. RESOURCES J. 21, 25 (1985).

163. OCS Oversight Hearings—Part 1, *supra* note 36, at 36.

portunity to target these sources of assistance to areas experiencing the impact of energy development. Fifth, many port facilities were currently underutilized due to declines in various coastal industrial activities. The existence of this underutilized capacity made it unlikely that the type of boomtown activity motivating the CEI program would result.¹⁶⁴ Finally, the administration considered further funding inappropriate when balanced against the need to reduce the federal budget deficit and taxes.¹⁶⁵

The proposed budget cuts would have effectively terminated the only national programs for comprehensive coastal management and protection. Withdrawal of federal funds would have caused the termination or limitation of state coastal programs¹⁶⁶ and would have significantly impaired the ability of state and local governments to plan for and ameliorate the adverse impacts of OCS oil and gas development.¹⁶⁷

In a survey of its member states, the Coastal States Organization concluded that the termination of federal funding would destroy or seriously impair 80% of existing state CZM programs.¹⁶⁸ "The result will be that the existing statutory review responsibilities and procedures for OCS and other coastal-related development activities would be seriously diminished, affecting the rate at which permits could be issued."¹⁶⁹ This would in turn affect the rate at which energy development projects could proceed.

Opponents of budget cuts for the nation's ocean and coastal programs identified seven reasons why the Reagan administration should support continued funding for national coastal programs. First, the coast is a national resource. Coastal facilities and marine environ-

164. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 29 (statement of W. Kenneth Davis, Deputy Secretary, U.S. Dep't of Energy).

165. *Id.* The elimination of the Coastal Zone Management Program would have saved the federal government approximately \$179 million through 1986. The termination of the Coastal Energy Impact Program would have saved \$158 million from the federal budget through 1986. *Oceanography Miscellaneous—Part 1: Hearings on Coastal Zone Management Budget Cuts Before the Subcomm. on Oceanography of the House Comm. on Merchant Marine and Fisheries*, 97th Cong., 1st Sess. 445-46 (1981) [hereinafter *Hearings on CZM Budget Cuts*] (statement of James Walsh, Acting Administrator, Nat'l Oceanic and Atmospheric Admin., U.S. Dep't of Commerce).

166. S. REP. NO. 112, 98th Cong., 1st Sess. 10 (1983) [hereinafter S. REP. NO. 112].

167. *OCS Oversight Hearings—Part 1*, *supra* note 36, at 36 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

168. *Hearings on CZM Budget Cuts*, *supra* note 165, at 522 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

169. S. REP. NO. 112, *supra* note 166, at 10.

ments serve people throughout the nation, not just local residents.¹⁷⁰ Moreover, the coastal zone contains some of the most biologically productive areas in the country.¹⁷¹ Second, the CZM program was the only national program that dealt comprehensively with the management of coastal resources.¹⁷² Third, the CZM program established a management framework that could deal with contemporary coastal development problems.¹⁷³ Fourth, if CZM programs were discontinued, it would cost millions of dollars to reestablish them in the future.¹⁷⁴ Coastal states would have lost staff members who had developed an expertise in coastal issues.¹⁷⁵ Fifth, with the acceleration of OCS leasing, a resource management program was even more essential for the protection of the marine environment. Sixth, it was unreasonable for the federal government to accelerate OCS leasing, yet fail to provide coastal states with funds to deal with the impacts of accelerated leasing. The burden of supporting accelerated OCS development should not be placed upon coastal states that had limited opportunities to recover associated impact costs. Finally, CZM programs were cost effective. The yearly budget for the CZM program was only thirty-seven million dollars. This was a small price to pay for a comprehensive national program of coastal resource management.¹⁷⁶

According to the coastal states, the elimination of the CZM and CEI programs would severely limit their opportunity for meaningful participation in the OCS decisionmaking process. Coastal states barred from such participation might turn increasingly to litigation to challenge individual lease sales. The Department of the Interior's attempt to accelerate OCS development might suffer major delays from

170. *Hearings on CZM Budget Cuts*, *supra* note 165, at 483 (statement of Dr. Marc Hershman, President, Coastal Soc'y). See also *id.* at 513 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

171. *Id.* at 513 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

172. *Id.* at 483 (statement of Dr. Marc Hershman, President, Coastal Soc'y).

173. *Id.* at 484 (statement of Dr. Marc Hershman, President, Coastal Soc'y). The Coastal Zone Management Act (CZMA) has proved to be a flexible law that can handle changing problems. For example, in 1976, the CZMA was used to deal with concerns of state and local governments about the adverse impacts from OCS oil and gas development. In 1978, the CZMA provided funds to renew the urban waterfront for recreation and tourism. Thus, in the past, CZMA's management capability has been efficiently used to address new problems. If retained, this management capability could be expanded to address future problems. If it is not retained, the nation will have to pay for an entire new management framework sometime in the future. *Id.*

174. *Id.* at 485 (statement of Dr. Marc Hershman, President, Coastal Soc'y).

175. S. REP. NO. 112, *supra* note 166, at 12.

176. *Id.*

such litigation.¹⁷⁷

Moreover, limiting coastal state participation in OCS policymaking violates the OCSLAA and the congressional intent behind its enactment. One purpose of the OCSLAA is to involve coastal states and local governments in policy planning for OCS oil and gas development.¹⁷⁸ The OCSLAA itself acknowledges that offshore energy development may cause adverse impacts on coastal states and local governments.¹⁷⁹ Therefore, coastal states and local governments are to be provided with comprehensive assistance to anticipate and ameliorate the adverse impacts of OCS oil and gas development. Such assistance must include timely access to information, an opportunity to participate in the formulation of policy and planning decisions, and an opportunity to review and comment on final decisions.¹⁸⁰

A strong system of coastal management and energy impact programs would benefit accelerated OCS development rather than deter it. The termination of federal financial support for the CZM and CEI programs would constitute "monumental bad faith on the part of the [Reagan] administration and a continuation of the very short-sighted, arrogant and negative approach of the Department of the Interior."¹⁸¹

D. *Environmental Concerns*

Environmental concerns related to areawide leasing include the possible inability of coastal states to assess and plan for the impacts of OCS development and the question of whether meaningful environ-

177. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 48-49. See also S. REP. NO. 112, *supra* note 166, at 12.

178. 43 U.S.C. § 1801(10)-(11) (1982). The House report on the OCSLA Amendments states:

A major purpose . . . is to involve the states and affected local areas within the States in the entire exploitation process to a greater degree. The bill provides an opportunity for them to participate in the decisionmaking process with regard to the overall leasing program of the Secretary, and individual development and production plans of the oil companies. The States and local areas are also supplied with information so that they will be able to plan for and ameliorate the on-shore consequences of off-shore development, and with assistance in coping with the on-shore impacts of such development. Involving States in the process from the beginning should avoid time-consuming lawsuits later.

H.R. REP. NO. 590, *supra* note 8, at 50, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 1457.

179. 43 U.S.C. §§ 1332(4), 1801(10) (1982).

180. *Id.* §§ 1332(4), 1801(11), 1802(4)-(6) (1982).

181. OCS Oversight Hearings—Part 1, *supra* note 36, at 285 (statement of Michael Fischer, Executive Director, California Coastal Comm'n).

mental impact statements can be prepared for entire planning areas.¹⁸²

1. *Planning for the impacts of OCS development*

Critics of areawide leasing assert that the large, diverse areas offered for lease in areawide sales, normally 30 to 100 million acres, and the uncertainty of which tracts will actually be leased, make it difficult for coastal states and local governments to evaluate and plan for the potential impacts from OCS development.¹⁸³ Areawide leasing has been called "too much, too fast."¹⁸⁴ An accurate assessment of impacts cannot be made since the potential impacts are difficult to identify in such large areas.¹⁸⁵ The very breadth of the areawide designation reduces the possibility that any particular locality will be affected and diminishes planning by state governments as they may be unwilling to allocate scarce resources to plan for impacts that are so speculative that they are unlikely to occur.¹⁸⁶ It is argued that because of the diversity in the environmental and socioeconomic characteristics of the nation's OCS areas, the DOI must identify the location of proposed sales with greater specificity.¹⁸⁷

This challenge to areawide leasing finds some statutory basis in the OCSLAA. Section 18(a) of the OCSLAA requires the Secretary of the Interior to develop a "schedule of proposed lease sales indicating, as precisely as possible, the size, timing, and location of leasing activity."¹⁸⁸ The specificity requirement in section 18(a) notifies state and local governments of OCS activities off their coasts in order to allow them time to prepare and plan for the accompanying impacts.¹⁸⁹ When Secretary Watt announced his areawide leasing plan, it was challenged in court on the basis that the 1982-87 areawide leasing pro-

182. *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 5*, *supra* note 136, at 68-69.

183. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 102-03 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

184. *OCS Leasing Process—Part 2: Hearings on the Five-Year Draft Proposed Program for Oil and Gas Leasing on the Outer Continental Shelf, and the State/Federal Consultation Process*, 99th Cong., 1st Sess. 132 (1986) [hereinafter *Hearings on OCS Leasing Process—Part 2*] (statement of Alice Ruby, on behalf of the Bristol Bay Coastal Resource Serv. Area Bd.).

185. *Department of the Interior and Related Agencies Appropriations for 1986: Hearings of the Testimony of Public Witnesses, Department of the Interior and Related Programs—Part 8 Before the Subcommittee on the Department of the Interior and Related Agencies of the House Comm. on Appropriations*, 99th Cong., 1st Sess. 147 (1985) [hereinafter *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 8*].

186. *California v. Watt*, 668 F.2d 1290, 1304 (D.C. Cir. 1981).

187. *Id.* at 1303.

188. 43 U.S.C. § 1344(a) (1982).

189. *California v. Watt*, 668 F.2d at 1304.

gram lacked specificity¹⁹⁰ since each planning area was scheduled as one lease sale, even though only a portion of each area would actually be leased.¹⁹¹ In *California v. Watt*,¹⁹² the court rejected this argument on the grounds that section 18(a) only required as much specificity "as possible."¹⁹³ The Secretary could not know what parts of a planning area would be leased before a Call for Information was made and subsequent procedures were carried out.¹⁹⁴

The petitioners also argued that the large size of the planning areas violated section 18(a) because it was impossible to determine the size of the lease offerings.¹⁹⁵ The *Watt* court, referring to the language of the OCSLAA, found that the plain words of the statute merely required that the size known at the program stage be given as precisely as possible.¹⁹⁶ There was nothing in the OCSLAA to limit the size of lease offerings, so long as the size was identified to the best of the Secretary's knowledge.¹⁹⁷

Finally, the petitioners claimed that the Secretary's delegation to industry of the responsibility to designate the areas which will actually be leased violated the OCSLAA.¹⁹⁸ This direct challenge to the area-wide leasing concept was also unsuccessful.¹⁹⁹ The court reasoned that the OCSLAA, a pyramidal statute, was designed to elicit input from all parties having an interest in OCS development.²⁰⁰ The Call for Information, which invites comments from states, local governments, and concerned citizens, as well as from industry, was an example of such participation.²⁰¹ With the *Watt* court's rejection of these arguments, the areawide leasing concept received judicial approval.²⁰²

190. *California v. Watt*, 712 F.2d 584, 591-93 (D.C. Cir. 1983).

191. *Id.* at 592.

192. 712 F.2d 584 (D.C. Cir. 1983).

193. *Id.* at 592.

194. *Id.*

195. *Id.*

196. *Id.* at 592-93.

197. *Id.* at 592.

198. *Id.* at 593.

199. *Id.*

200. *Id.*

201. *Id.*

202. *Vass I*, *supra* note 35, at 77.

The decision in *California v. Watt* was not the first time the Court of Appeals for the District of Columbia had reviewed a section 18(a) challenge to the designation of a broad geographical area for lease sale planning. In 1981, a group challenged Secretary of the Interior Cecil Andrus's five-year program for the sale of OCS oil and gas leases. *California v. Watt*, 668 F.2d 1290 (D.C. Cir. 1981). Plaintiffs argued that the designation of "California" as the area for proposed lease sales 73 and 80 violated the specificity requirement of section 18(a) of the OCSLAA. *Id.* at 1303. The plaintiffs argued, and Secretary Andrus

2. *The quality of environmental assessments*

Under areawide leasing, an areawide environmental impact statement (EIS) is prepared for the first sale in a planning area to assess the effects of all oil and gas activity that might occur there. The EIS examines the environment of the entire planning area and considers the nonpetroleum-related activities which may be endangered by offshore oil and gas activities. The EIS identifies alternatives to the proposed development, including the deletion of environmentally sensitive areas and the development of mitigating measures.²⁰³ It emphasizes the aggregate impact of OCS oil and gas activity that would occur if all the hydrocarbon resources in the planning area were developed. The EIS assesses the expected cumulative effects that the DOI believes will occur from the initial sale under study. Under the areawide EIS concept, the DOI has an early start on the environmental analysis since it does not have to wait for the identification of specific tracts as was previously necessary.²⁰⁴

The EIS prepared for subsequent offerings in a planning area updates the initial areawide EIS. This concept is called "tiering."²⁰⁵ The update includes the results of ongoing environmental studies and mon-

conceded, that it would have been possible to designate with more precision the area of offshore California in which the sales would occur. *Id.* at 1303-04. The court held that since the Secretary had the information necessary to designate the area for sale more precisely, the statute required him to do so. *Id.* at 1304. This 1981 holding can be reconciled with the holding in the 1983 *Watt* case on the basis that the areawide leasing process often does not enable the Secretary of the Interior to designate with precision the area in which lease sales will occur. *California v. Watt*, 712 F.2d 584, 592 (D.C. Cir. 1983). Nonetheless, the later case, taken as a whole, is considerably more deferential to the Secretary of the Interior and substantially reduced the role of judicial review with respect to offshore oil and gas lease sales. See Comment, *The Seaweed Rebellion Revisited: Continuing Federal-State Conflict in OCS Oil and Gas Leasing*, 20 WILLAMETTE L. REV. 83, 122 (1984) [hereinafter *The Seaweed Rebellion Revisited*]; Kelly, *Court Ruling Supports OCS Leasing Plan*, OFFSHORE, Oct. 1983, at 56-57.

203. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 17-18. See also *Hearings on OCS Lease Sales—Part 1*, *supra* note 12, at 33-34 (statement of John Fields, Acting Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, U.S. Dep't of the Interior).

204. *Hearings on OCS Lease Sales—Part 1*, *supra* note 12, at 34 (statement of John Fields, Acting Manager, Pacific Outer Continental Shelf Office, Bureau of Land Management, U.S. Dep't of the Interior).

205. Tiering involves sequential preparation of environmental impact statements from a broad, programmatic to a lesser or site-specific scope. 40 C.F.R. § 1508.28 (1989). For a discussion on the tiering of impact statements prepared on OCS lease sales, see Comment, *The Tiering of Impact Statements—Can the Process be Stopped Halfway?*, 20 URB. L. ANN. 197 (1980). For a case holding that site-specific reports are unnecessary where the DOI has been reasonably diligent in preparing broader impact statements, see *Get Oil Out, Inc. v. Andrus*, 477 F. Supp. 40 (C.D. Cal. 1979). See also *supra* notes 83-85 and accompanying text.

itoring projects as well as information from any new exploration activities. Each subsequent EIS is shorter and takes less time to prepare than the initial areawide EIS.²⁰⁶ The DOI believes this change complies with the National Environmental Policy Act (NEPA) regulations which encourage agencies to tier their environmental impact statements to eliminate repetitive discussions and analysis.²⁰⁷

Critics of areawide leasing assert that performing a meaningful environmental analysis for areawide sales is not possible.²⁰⁸ First, the large size of the planning area makes detailed environmental analysis impractical.²⁰⁹ The largest area previously analyzed under the tract selection system in an OCS EIS was 3.4 million acres.²¹⁰ Second, the DOI is unable to delete particularly sensitive tracts, because tract-specific information is not available. General information for entire planning areas does not assist in determining the need for tract-specific lease stipulations.²¹¹ Third, the areawide EIS procedures place an increased burden on special interest groups to gather information for tract deletions and lease stipulations. This responsibility belongs to the DOI as trustee for the public lands.²¹² Fourth, performing environmental analysis on OCS areas where there is little chance of discov-

206. *Hearings on OCS Lease Sales—Part 1*, *supra* note 12, at 34.

207. *OCS Oversight Hearings—Part 3*, *supra* note 88, at 27; 40 C.F.R. § 1508.28 (1989).

208. *Outer Continental Shelf Lease Sales and the Department of the Interior's Five-Year Leasing Plan—Part 2: Hearings on the Outer Continental Shelf Lease Sales and the Department of the Interior's Five-Year Leasing Plan Before the Subcomm. on Oversight and Investigations of the House Comm. on Interior and Insular Affairs*, 97th Cong., 1st & 2d Sess. 247-48 (1981-82) [hereinafter *Hearings on OCS Lease Sales—Part 2*] (statement of Frances Beinecke, Senior Resource Specialist, Natural Resources Defense Council, Inc. and Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.); *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 102-03 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.); *Hearings on OCS Leasing Process—Part 2*, *supra* note 184, at 132 (statement of Alice Ruby, on behalf of the Bristol Bay Coastal Resource Serv. Area Bd.).

209. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 102 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

210. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 7 n.21.

211. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 102 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.); *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 254 (statement of Frances Beinecke, Senior Resource Specialist, Natural Resources Defense Council, Inc. and Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

212. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 257-58 (statement of Frances Beinecke, Senior Resource Specialist, Natural Resources Defense Council, Inc. and Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

ering oil is a pointless effort and a waste of government resources.²¹³ It costs the DOI approximately \$5 million to produce an EIS for an OCS lease sale.²¹⁴ Finally, the reductions in the level of funding for coastal management programs mean that financial resources will not be available to adequately assess the environmental impacts of area-wide leasing.²¹⁵

The DOI stresses that prelease and postlease environmental regulations and state and local consultation are the same under areawide leasing as under the tract nomination system. The steps and procedures required by NEPA to assess environmental impacts from OCS leasing are being followed.²¹⁶ The industry believes that environmental assessments under areawide leasing are better. Consideration of larger areas may lead to a broader knowledge of geohazards, marine biology, physical oceanography, and environmental baselines. Area-wide EISs recognize that most environmental studies are regional in scope rather than site specific.²¹⁷

Despite the critics' claims, the areawide leasing concept does not prevent the preparation of meaningful environmental analysis for lease sales. Representatives of industry, coastal states and national environmental and fishery groups expressed little concern about the quality of DOI's environmental assessments in a questionnaire sent by the General Accounting Office. The questionnaire invited comments from concerned groups about DOI's planning documents. The majority of these groups believed that the documents are complete and contain accurate information.²¹⁸ Although DOI reduced the time for public comment, most of these groups believe that they still have an adequate

213. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 102 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

214. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 5. Between 1970 and 1984, the preparation of EIS's on the oil and gas leasing program cost the DOI approximately \$60 million. The actual cost is considerably higher. The figure cited only includes staff salaries and printing costs and does not take into account money spent for environmental studies, hearings, and meetings for the sales. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 86.

215. *Hearings on OCS Leasing Process—Part 2*, *supra* note 184, at 132 (statement of Alice Ruby, on behalf of the Bristol Bay Coastal Resource Serv. Area Bd.).

216. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 2-3.

217. *Hearings on OCS*, *supra* note 99, at 264.

218. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 46. The GAO sent questionnaires to 128 oil and gas companies, 23 coastal states, and 78 national environmental and fishery groups, inviting their comments on DOI's planning process. *Id.* at vii-viii. Of those states that responded, 52% stated that DOI's planning documents were accurate and complete. *Id.* at 47. Only 22% of responding environmental and fishery groups stated that one or more planning documents were incomplete. *Id.* at 48.

opportunity to participate.²¹⁹

E. *Fair Market Value*

Section 18(a)(4) of the OCSLAA requires the Secretary of the Interior to prepare and maintain a five-year OCS leasing program that will assure the federal government receipt of fair market value for leased tracts.²²⁰ Areawide leasing floods the marketplace with large lease offerings and changes the bid acceptance procedures formerly used to determine fair market value.²²¹ Controversy has resulted from the fact that the average bonus bid per acre has declined under the areawide system and that fair market value may not be received for leases under areawide offerings.²²²

The OCSLAA leasing program is based on the premise that competition will provide a fair market value for the OCS tracts that are leased.²²³ The level of competition in the lease market may be assessed in terms of the number of participating companies, the percentage of

Similarly, of the 105 companies responding to the questionnaire, only two stated that one or more planning documents were incomplete. *Id.* at 48.

219. *Id.* at 48. The DOI reduced the minimum comment time to respond to its Call for Information from 60 to 30 days. Of the states which commented, 81% stated that they had adequate time to respond. *Id.* at 49. However, only 16% of responding environmental and fishery groups believed that the time allowed to respond to the Call for Information is adequate. *Id.* There was no concern expressed by industry with the adequacy of the time allowed for the Call for Information. *Id.* Similarly, the majority of affected states and companies which responded stated that they had adequate time to comment on DOI's draft EIS's, when time was reduced below the traditional 60 day comment period, but only 36% of responding environmental groups said that the time was adequate. *Id.*

220. 43 U.S.C. § 1344(a)(4) (1982).

221. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 50.

222. *Hearing on the Five-Year OCS Leasing Schedule, supra* note 4, at 27. *See also Hearings on OCS Leasing Process—Part 1, supra* note 98, at 102 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

The Interior Department has traditionally leased OCS lands for oil and gas development under a bonus bid, fixed royalty rate bidding system. Under this system, companies submit cash bids, commonly called bonuses, for the right to explore and develop OCS tracts. These bonuses are paid before exploration and are not refundable, regardless of whether any oil or gas is eventually produced. H.R. REP. NO. 590, *supra* note 8, at 132, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1538.

223. COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. EMD-77-19, REPORT TO THE CONGRESS: OUTER CONTINENTAL SHELF SALE NO. 35—PROBLEMS SELECTING AND EVALUATING LAND TO LEASE 30 (1977) [hereinafter OCS SALE 35]. For discussions on leasing federal mineral resources, see generally SMILEY, COMPETITIVE BIDDING UNDER UNCERTAINTY, THE CASE OF OFFSHORE OIL (1979); McDONALD, THE LEASING OF FEDERAL LANDS FOR FOSSIL FUELS PRODUCTION (1979); Gilley & Karels, *The Competitive Effect in Bonus Bidding: New Evidence*, 12 BELL J. ECON. 637 (1981); Gilley, Karels & Lyon, *The Economics of Oil Lease Bidding*, 18 HOUS. L. REV. 1061 (1980-81); Logue, Sweeney & Willett, *Optimal Leasing Policy for the Development of*

tracts receiving bids, the average number of bids per tract, and the average dollar amount bid per acre.²²⁴ Although the first two items have not proven to be a problem in areawide leasing,²²⁵ the average number of bids per tract and the average dollar amount bid per acre have decreased with the implementation of areawide leasing.²²⁶

1. *Increased Offerings—Flooding the Market?*

The Comptroller General has repeatedly concluded that competition is inadequate to assure receipt of fair market value when 49% or more of the tracts receiving bids obtain only one or two bids.²²⁷ Areawide leasing, with its expanded lease offerings, has increased the number of tracts receiving single bids. The number of bids per tract has declined from an average of 2.4 bids for each tract in tract nomination sales to 1.7 bids for each tract in areawide sales.²²⁸ The DOI cancelled OCS Sale No. 82 in September 1984 when no industry bids were received.²²⁹ The large number of tracts receiving only one or two bids²³⁰ is an indication that sufficient competition may not exist for the government to receive fair market prices for much of the OCS acreage

Outer Continental Shelf Hydrocarbon Resources, 51 LAND ECON. 191 (1975); Reece, *Competitive Bidding for Offshore Petroleum Leases*, 9 BELL J. ECON. 369 (1978).

224. U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. GAO/RCED-83-9, OFFSHORE LEASE SALE 59 AFFECTED BY DIFFERING VIEWS ON OIL AND GAS POTENTIAL 4 (1983) [hereinafter OCS SALE 59].

225. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 19, 22-24; Hagar, *supra* note 99, at 41.

226. See Crow, *Dispute Over Area-wide Leasing Central to Oil Industry Access to OCS Acreage*, OIL & GAS J., Dec. 17, 1984, at 41-46.

227. COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. EMD-77-51, REPORT TO THE CONGRESS: OUTER CONTINENTAL SHELF SALE 40—INADEQUATE DATA USED TO SELECT AND EVALUATE LANDS TO LEASE 27 (1977) [hereinafter OCS SALE 40]; COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. EMD-79-22, REPORT TO THE CONGRESS: GEORGIA EMBAYMENT—ILLUSTRATING AGAIN THE NEED FOR MORE DATA BEFORE SELECTING AND LEASING OUTER CONTINENTAL SHELF LANDS 10 (1979).

228. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 18-19.

229. U.S. GENERAL ACCOUNTING OFFICE, REPORT TO THE CHAIRMAN, COMMITTEE ON MERCHANT MARINE AND FISHERIES, HOUSE OF REPRESENTATIVES, PUB. NO. GAO/RCED-83-9, OUTER CONTINENTAL SHELF LEASE SALE 82—SALE PREPARATION AND SUBSEQUENT CANCELLATION 1 (1985) [hereinafter OCS SALE 82]. Critics of areawide leasing point to the cancellation of Sale 82 as an example that the areawide leasing system is not working. Crow, *supra* note 226, at 43. Industry, however, stated that the main reason why companies did not bid was because of poor potential for oil and gas discoveries in the North Atlantic. OCS SALE 82, *supra*, at 4-6.

230. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 20.

leased.²³¹ The DOI itself has recognized that areawide leasing will result in more tracts receiving fewer bids:

It is likely that substantially expanded leasing will result in lower bids on average and perhaps lower bids for some tracts than they would bring under a more restrictive leasing program. . . . Expanded lease offerings are also likely to result in more tracts receiving only 1 or 2 bids and perhaps even in fewer bids on the better prospects.²³²

Even oil industry commentators acknowledged that the average number of bids per tract would decrease in areawide leasing.²³³

However, both DOI and industry maintain that competition for OCS oil and gas leases is much greater than indicated by the average number of bids received per tract.²³⁴ Of the tracts offered in lease sales from 1954-76, 39% received only one bid, but these tracts yielded only 10% of total bonus value and accounted for only 17% of the total value of production. Similarly, 19% of the tracts received two bids and produced 8% of the total bonus value. These slightly improved prospects provided about 16% of the total value of production. The remaining 42% of tracts offered received three or more bids and generated 82% of the bonus value. The total value of production for these better prospects was a disproportionately high 64%.²³⁵ This finding indicates that although many tracts have been leased with only one or two bids, these low competition leases were of marginal economic value. Conversely, most of the production came from tracts that had strong competition and generated high bonuses. Competition for leases is determined more by the hydrocarbon potential of the tract offered than the size of the lease sale.²³⁶

A study for the state of Texas, however, concluded that the reduction in competition, defined as the number of bids per tract, was the direct result of areawide leasing and the oversupply of acreage of-

231. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 521 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

232. BUREAU OF LAND MANAGEMENT, U.S. DEP'T OF THE INTERIOR, 2 FINAL SUPPLEMENT TO THE FINAL ENVIRONMENTAL STATEMENT: PROPOSED FIVE-YEAR OCS OIL AND GAS LEASE SALE SCHEDULE, JANUARY 1982-DECEMBER 1986 859 (undated).

233. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 521 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

234. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 57.

235. *Id.* at 56.

236. *Id.*

ferred.²³⁷ The General Accounting Office also found that the change from the tract selection process to areawide leasing has reduced the number of bids received for individual tracts. Furthermore, the GAO results indicated that the number of bids received per tract significantly affected the amount of the high bid per acre received by the federal government. On average, each additional bid per acre is associated with about a \$1,082 increase in the amount of the high bid received for each acre of OCS land.²³⁸

Another point of debate is whether the areawide concept should be abandoned because the average bonus bid per acre has declined by about 75% since the beginning of areawide leasing.²³⁹ The average bid per acre for lease sales from November 30, 1979 to September 30, 1984 decreased from \$2,624 per acre in tract nomination sales to \$686 per acre in areawide sales.²⁴⁰ By OCS region, the average bid per acre leased declined from \$1,793 to \$664 in Alaska, from \$1,619 to \$299 in the Atlantic, from \$3,099 to \$702 in the Gulf of Mexico, and from \$4,628 to \$366 in the Pacific.²⁴¹

In response to these figures, the DOI and industry maintain that areawide leasing is not responsible for the decline in the average bid per acre. There are good reasons for industry to offer less than it once did per OCS acre, regardless of the type of leasing system used. These reasons include: the failure of industry to find oil and gas in highly promising areas of the Atlantic and Alaska regions; the inferior quality of the remaining offerings; and the location of many of the tracts in deepwater and frontier areas where operating costs are high.²⁴² In ad-

237. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 21.

238. *Id.* at 22.

239. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 75, 122 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.); *Important OCS Issue Hung Up on Minor Point: Bids Per Acre*, Oil & Gas J., Dec. 17, 1984, at 39. See also *Lack of Bids for Whale Pasture Doesn't Invalidate Area-Wide Leasing*, Oil & Gas J., Oct. 22, 1984, at 55; *To Boost OCS Bidding, Extend Terms for Leases in Deep Water*, Oil & Gas J., July 16, 1984, at 23; *Decline in Bids per OCS Acre No Reason to Scrap Area-Wide Sales*, Oil & Gas J., May 7, 1984, at 71; *Low Bids May Cause Revision of Area-Wide OCS Sales*, Oil & Gas J., Apr. 30, 1984, at 40.

240. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 22. See also *Hearing on the Five-Year OCS Leasing Schedule*, *supra* note 4, at 27; *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 102 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

241. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 22.

242. *Important OCS Issue Hung Up on Minor Point: Bids Per Acre*, *supra* note 239, at 39; *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 75, 122 (statement of

dition, areawide sales have included a combination of high-value and low-value tracts, with the result that the average bid would logically be lower than bids received in tract nomination sales.²⁴³ Industry also asserts that the critics of areawide leasing focus too much attention on the up-front bonus which companies pay the federal government for an OCS lease. The United States will receive more money from the expedited production of OCS reserves and the revenues it generates in royalties and taxes than from the up-front bonuses. The royalty and tax increases will more than offset the decline in bonuses per acre.²⁴⁴

Finally, the DOI and industry maintain that the decline in bid per acre is primarily the result of the drop in the price of oil. While the depressed world oil market is in part responsible for low lease bids, the decline greatly exceeds the degree to which the international price of oil has fallen. In 1985, the bid levels in some sales dropped 90% from their high levels of just a few years ago, while the world price of oil has declined about 12% since reaching its high in 1981.²⁴⁵

Furthermore, it is highly unlikely that the decline in bonuses per acre will be offset by earlier receipt of royalties, rents and taxes or by increased production. As of the end of fiscal year 1984, bonuses had comprised about 67% of the total direct revenues received by the federal government since OCS leasing began in 1954. Royalties and rents accounted for most of the remaining 33% of direct revenues.²⁴⁶

2. DOI's New Process for Evaluating Industry Bids

In addition to flooding the marketplace with lease offerings, the accelerated OCS program changed the evaluation procedure that the DOI had used in the past to determine whether the bids received constituted fair market value. Under the traditional procedure, economic, geological, and engineering data on the sale area were gathered before each sale. A detailed economic evaluation was prepared from this in-

Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.); *Hearings on OCS Five-Year Program*, *supra* note 99, at 205-09.

243. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 122 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.).

244. *Hearings on OCS Five-Year Program*, *supra* note 99, at 203. See also Hagar, *supra* note 99, at 40.

245. *Hearings on OCS*, *supra* note 99, at 413 (statement of Andrew Palmer, Director, Oceans, Coast, and Public Lands Project, on behalf of the Env'tl. Policy Inst.).

246. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 24, 26.

formation for every tract offered for lease,²⁴⁷ and a minimum acceptable bid for each tract was determined prior to the sale. After the sale, industry bids were compared with the presale tract evaluations, and only those bids meeting or exceeding the DOI's assigned values could be accepted.²⁴⁸

This detailed analysis slowed leasing of OCS tracts. Recognizing that it would be impossible to perform a detailed analysis on every tract offered under the areawide concept, the DOI changed the tract evaluation procedure. Under the new evaluation procedure, tracts are no longer evaluated before a sale. Instead, bids are analyzed after they are received by a two-phase evaluative process that relies more heavily on the marketplace to determine fair market value.²⁴⁹ Because the OCSLAA does not explicitly define fair market value, the DOI adopted the common law definition. Common law defines fair market value as the price that a knowledgeable and willing seller would accept from a knowledgeable and willing but not obligated buyer.²⁵⁰

In phase one of the new process, the tracts receiving bids are separated into three categories. These categories include: (1) tracts receiving nonprospective bids; (2) tracts where opportunities for strategic underbidding, information asymmetry,²⁵¹ collusion, and other noncompetitive practices might occur, and where the government has the most detailed and reliable data; and (3) tracts where competitive market forces can be relied upon to assure fair market value.²⁵² Within these categories, high bids on all tracts classified as drainage and development tracts²⁵³ are referred directly to phase two for further evaluation. All legal high bids on nonprospective tracts are

247. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 522-23 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

248. OCS SALE 59, *supra* note 224, at 10.

249. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 28-30.

250. MINERALS MANAGEMENT SERV., U.S. DEP'T OF INTERIOR, PROCEDURES FOR OCS BID ADEQUACY, INCLUDING THE FINAL REPORT OF THE OCS FAIR MARKET VALUE TASK FORCE at i (1983) [hereinafter PROCEDURES FOR OCS BID ADEQUACY]. See also *California v. Watt*, 712 F.2d 584, 606 (D.C. Cir. 1983); EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 30-32; HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 52; OCS SALE 59, *supra* note 224, at 10-11; *OCS Leasing Proposal Keyed to Market Forces*, *supra* note 79; *Reagan Energy Policy Plan Tied to Free Market*, *supra* note 79; *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 75.

251. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 52. Nonprospective tracts are those in which oil and gas probably do not exist, or from which oil and gas are not economically recoverable. *Id.* at 52 n.146.

252. *Id.* at 52.

253. *Id.* "Development and drainage tracts are located near tracts with proven pro-

accepted. After anomalously low bids have been screened out, high bids are accepted for any prospective tract that received three or more bids, that received more than the average number of bids on prospective tracts in the entire sale, or for which the geometric average bonus bid²⁵⁴ for the tract is in the upper 50th percentile for those prospective tracts receiving bids.²⁵⁵

All bids which are not accepted under the phase one criteria undergo a more detailed analysis in phase two. This analysis is the same as that performed on all tracts under the old procedure. The DOI estimates that approximately 55% of the bids on prospective tracts are accepted in phase one of the new evaluation procedure.²⁵⁶

This new procedure facilitates accelerated leasing which in turn results in a short-term increase in annual revenues to the federal government. This increase, however, may be offset by future long-term losses to the Treasury.²⁵⁷ The Sierra Club has calculated that the federal government will lose approximately \$76.89 billion in OCS lease revenues if all the remaining oil and gas reserves are leased under the procedure developed for the areawide OCS program.²⁵⁸ The depression of bid levels below fair market value will result in a loss of \$53.5

duction." They are given more detailed analysis because holders of nearby tract leases may possess more information than other bidders. *Id.* at 52 n.148.

254. *Id.* at 52. A geometric average bonus bid is the mean of all bids on a tract. *Id.* at 52 n.149.

255. *Id.* at 52. For an overview of tract bid evaluation procedures, see PROCEDURES FOR OCS BID ADEQUACY, *supra* note 250; *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 75-76; EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 92-100.

256. PROCEDURES FOR OCS BID ADEQUACY, *supra* note 250, at 5.

257. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 18. For discussions on revenue losses from leasing OCS lands, see generally Grayson, Canaday, Brumbaugh, Sherman & Sutherland, *Issues of Competition on the Outer Continental Shelf*, 3 VA. J. NAT. RESOURCES L. 69 (1983); Mead, Moesidjord & Sorensen, *Competition in Outer Shelf Oil and Gas Lease Auctions: A Statistical Analysis of Winning Bids*, 26 NAT. RESOURCES J. 95 (1986); Shapiro, *Sagebrush and Seaweed Robbery: State Revenue Losses From Onshore and Offshore Federal Lands*, 12 ECOLOGY L.Q. 481 (1985).

Areawide leasing is not the only reason why the federal government is losing revenues from public lands. The deficiencies in DOI's oil and gas royalty collections have resulted in losses of millions of dollars owed to the United States from industry lessees. COMPTROLLER GENERAL, GENERAL ACCOUNTING OFFICE, REPORT TO THE CONGRESS OF THE UNITED STATES, OIL AND GAS ROYALTY COLLECTIONS—SERIOUS FINANCIAL MANAGEMENT PROBLEMS NEED CONGRESSIONAL ATTENTION (1979); GENERAL ACCOUNTING OFFICE, REPORT TO THE SECRETARY OF THE INTERIOR, INTERIOR'S MINERALS MANAGEMENT PROGRAMS NEED CONSOLIDATION TO IMPROVE ACCOUNTABILITY AND CONTROL (1982).

258. SIERRA CLUB, *supra* note 46, at 14; *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 532 (statement of Carl Pope, Assistant Conservation Director, Sierra Club), and at 580-83 (DOI's response); HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR

billion over time.²⁵⁹ According to the Sierra Club's calculations, the new bid evaluation procedure will cost taxpayers an additional \$23.4 billion.²⁶⁰ Even the DOI calculated that the areawide concept could cost the public \$5 billion in lost revenues through 1987.²⁶¹

According to some sources, these projected losses are now being verified. In a statistical analysis for the first ten areawide sales between April 1983 and September 1984, the GAO indicated that changing to the areawide program resulted in an average reduction in bids of \$541 per acre leased, or \$3.1 million for each tract leased.²⁶² Although the federal government received \$8.9 billion in total bids, the GAO analysis concluded that this amount was about \$7 billion (a discounted value of \$5.4 billion) less than the United States would have received if the slower pace of the prior tract nomination program had been followed.²⁶³ The areawide system and massive dumping of leases on the market have driven down the value of state offshore leases as well, resulting in lost revenue to coastal states.²⁶⁴

Another major area of economic concern was the cost-benefit analysis underlying the accelerated scheduling of sales. In formulating the timing of individual lease sales, the DOI considered only the value of expected petroleum resources in 1982, giving no consideration to the change in value of those resources over time:

In essence, [the Department of the Interior's] approach to leasing is to immediately dispose of any of those resources which have any value at all. . . . This methodology ignores the obvious fact—that

OCS LEASING PLAN, *supra* note 4, at 55-60; *OCS Lease Plan Seen Costing U.S. \$77.28 Billion*, *Oil & Gas J.*, Sept. 27, 1982, at 114.

259. SIERRA CLUB, *supra* note 46, at 8.

260. *Id.* at 12.

261. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 522-23 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

262. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 18, 22-24. See also Peterson, *Billions Seen Lost in Offshore Leasing: GAO Says Watt Scheme Cut Competition*, *Washington Post*, July 30, 1985, at A17, col. 1. The DOI and industry strongly disagreed with GAO's conclusions, maintaining that the decrease in OCS revenues was largely the result of the decline in oil prices and quality of tracts offered, including deepwater offerings. U.S. GENERAL ACCOUNTING OFFICE, BRIEFING REPORT TO THE CHAIRMAN, SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS, COMMITTEE ON ENERGY AND COMMERCE, HOUSE OF REPRESENTATIVES, OFFSHORE OIL AND GAS, VIEWS ON INTERIOR'S COMMENTS TO GAO REPORTS ON LEASING OFFSHORE LANDS (1986).

263. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 18. Because it would have taken the DOI longer to lease the same amount of OCS lands under the tract nomination system, the \$7 billion loss was discounted 6.5% in 1984 dollars to reflect the time value of money. *Id.* at 24.

264. *Hearings on OCS Leasing Process—Part 2*, *supra* note 184, at 257-58.

any rational owner of resources would recognize—that delaying the disposition of resources until sometime in the future is economically preferable if the value is expected to rise sufficiently in the interim.²⁶⁵

In calculating the costs and benefits of delaying lease sales, the DOI assumed a 1% annual real price increase. This projected low rate of increase significantly underestimated the benefits of delaying certain lease sales, including those in Alaska.²⁶⁶

The areawide leasing concept has decreased competition in the lease market;²⁶⁷ nevertheless, the DOI is placing increased reliance on that market to assure receipt of fair market value for the disposal of publicly owned resources.²⁶⁸ In fact, large acreage offerings and increased sale frequency have reduced competition and bid revenues for individual tracts.²⁶⁹ The possible effects of Secretary Watt's accelerated leasing plan can be inferred from the results of a previous attempt in 1973 to accelerate OCS leasing. In that instance, competition declined as the acreage offered increased. The Watt accelerated leasing program, like the one in 1973, has significantly reduced competition for OCS tracts.²⁷⁰ Furthermore, the introduction of areawide leasing occurred at a time when the market for petroleum products was soft. The worldwide glut of oil and gas depresses the demand for OCS leases and reduces the return the public receives for these resources.²⁷¹

Coastal states do not receive funds directly from federal OCS lease activity.²⁷² Nonetheless, states benefit indirectly when public resources are sold for their true value.²⁷³ Selling public resources at a lower price is inconsistent with a national fiscal policy devoted to balancing the budget and lowering taxes.²⁷⁴ Indeed, Secretary Watt's ac-

265. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 527 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

266. *Id.* at 528. The one percent figure was taken from the low growth range prediction of a study done by the Resource Consulting Group (RCG). The RCG determined that the most likely growth rate was 2.5 to 3.5% per year. *Id.* at 528-29. The Department of Energy predicted a 3% growth rate. *Id.* At a 3% rate, it was beneficial to delay leasing in six lease areas of offshore Alaska that have sensitive resources. *Id.* at 529 n.1.

267. *EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM*, *supra* note 96, at 18.

268. *Id.* at 1-2.

269. *Id.* at 18.

270. *NAT'L OCEAN POL'Y STUD.*, *supra* note 156, at 4-5, 17-25.

271. *Senate Hearings on the Five-Year OCS Leasing Plan*, *supra* note 34, at 8 (statement of Senator Howard Metzenbaum of Ohio).

272. H.R. REP. NO. 590, *supra* note 8, at 89, *reprinted in* 1978 U.S. CODE CONG. & ADMIN. NEWS 1496.

273. *Hearings on OCS Leasing Process—Part 2*, *supra* note 184, at 258.

274. *Id.*; *OCS Oversight Hearings—Part 2*, *supra* note 1, at 277.

celerated areawide leasing program has been characterized as "the most monumental giveaway in the Nation's history."²⁷⁵

3. *Compliance with OCSLAA's Fair Market Value Requirement*

Just as the issue of compliance with section 18(a) of the OCSLAA was raised,²⁷⁶ the issue of receipt of fair market value for OCSLAA resources was raised in a court challenge to Secretary Watt's areawide leasing plan. In *California v. Watt*,²⁷⁷ the petitioners challenged the Secretary's program, claiming that it failed to assure receipt of fair market value for offshore resources. They argued that areawide leasing and the accelerated rate of leasing combined to depress the value of bonus bids. Consequently, they argued that the federal government was not receiving the fair market value of the lands leased as required by the OCSLAA.²⁷⁸

The court found that even if the petitioners' claims were correct, it would not mean that the Secretary had violated the OCSLAA. The court upheld the areawide leasing program, noting that the OCSLAA does not require a maximization of revenues, only the receipt of a fair return for federal leases.²⁷⁹ Secretary Watt had determined that the supply and demand conditions existing at the time of the lease sale, along with a process of competitive sealed bidding and the bid evaluation process, would be sufficient to ensure a fair return.²⁸⁰ The court held that the Secretary's reliance on these factors was a reasonable means of ensuring receipt of fair market value for OCS lands and complied with the OCSLAA.²⁸¹

The *Watt* court's decision was incorrect.²⁸² Although the

275. *Senate Hearings on the Five-Year OCS Leasing Plan*, *supra* note 34, at 9 (statement of Senator Howard Metzenbaum of Ohio).

276. *See supra* notes 188-202 and accompanying text.

277. 712 F.2d 584 (D.C. Cir. 1983).

278. *Id.* at 606. For a discussion on the receipt of fair market value in the *Watt* litigation, see Fitzgerald, *California v. Watt: Congressional Intent Bows to Judicial Restraint*, 11 HARV. ENVTL. L. REV. 147, 194-97 (1987).

279. *California v. Watt*, 712 F.2d at 606.

280. *Id.* at 606-08.

281. *Id.* at 608.

282. *See Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 162 (1981). *See also* *Energy Action Educ. Found. v. Andrus*, 631 F.2d 751, 760 (D.C. Cir. 1979) ("[T]he appropriate standard appears to be that leases must insure a 'fair and equitable return.'"). For discussion of these cases, see Comment, *Watt v. Energy Action Educational Foundation: Secretarial Discretion to Select Lease Bidding Systems*, 3 VA. J. NAT. RESOURCES L. 163 (1983).

OCSLAA does not explicitly define fair market value,²⁸³ the Act requires the Secretary to conduct the OCS leasing program in order “to assure receipt of fair market value for the lands leased and the rights conveyed by the Federal Government.”²⁸⁴ One of the stated purposes of the OCSLAA was “to preserve and maintain free enterprise competition.”²⁸⁵ The Secretary is charged with the duties of a trustee over the public lands. An important responsibility of the Secretary as trustee is to insure “that the public interest is served by exacting a fair return on behalf of the government from the persons engaged in exploiting its resources.”²⁸⁶

The *California v. Watt* decision fails to account for the new emphasis on receipt of fair market value in the OCSLAA.²⁸⁷ The 1953 version of the OCSLA did not mention fair market value. It provided that in order to meet urgent need for further exploration and development of the oil and gas resources of the OCS, “the Secretary is authorized to grant to the highest responsible qualified bidder or bidders by competitive bidding . . . oil and gas lease[s] [on the OCS].”²⁸⁸ The 1978 amendments added the fair market value requirement and changed the Act’s emphasis, adding the fair market value requirement as a congressional purpose on an equal footing with those of energy development and environmental protection.²⁸⁹ In addition to the general fair market value requirement of the OCSLAA, other sections of the Act also support a strict interpretation of fair market value. For example, among the congressional findings is a statement that “the Outer Continental Shelf contains significant quantities of oil and natural gas and is a vital national resource reserve which must be carefully managed so as to realize fair value, to preserve and maintain competition, and to reflect the public interest.”²⁹⁰ The legislative history of the OCSLAA emphasizes the congressional intent to assure the receipt of fair market value for leasing OCS lands. The House report accompanying the 1978 amendments states: “[L]easing activities, including the scheduling of lease sales and the amount to be included in the lease sales, should assure receipt to the Government of fair market value for

283. EARLY ASSESSMENT OF DOI’S AREAWIDE LEASING PROGRAM, *supra* note 96, at 30.

284. 43 U.S.C. § 1344(a)(4) (1982).

285. *Id.* § 1802(2)(D).

286. *Hannifin v. Morton*, 444 F.2d 200, 202 (10th Cir. 1971).

287. See Note, *Sales of Federal Fuel Resources: Achieving “Fair Market Value”*, 9 COLUM. J. ENVTL. L. 237, 253-54, 257 (1984).

288. 43 U.S.C. § 1337(a)(1) (1982).

289. *Id.* § 1344(a)(4) (1982).

290. *Id.* § 1801(7).

our public resources.”²⁹¹ Furthermore, the United States Supreme Court has recognized that Congress, in passing the OCSLAA, “committed the Government to the goal of obtaining fair market value for OCS oil and gas resources. The 1978 Amendments themselves proclaim this intention, and the legislative history is replete with references to this purpose.”²⁹² The *Watt* court ignored the clear congressional intent to emphasize the receipt of fair market value for leasing OCS lands and incorrectly upheld implementation of Secretary Watt’s areawide leasing concept.

Although fair market value is one of the most difficult concepts to define in federal resource leasing policy, the federal government should not offer to lease so much acreage that an already depressed market will be flooded.²⁹³ Areawide leasing and an accelerated leasing schedule have jeopardized the assurance that the government will receive a fair market value return on leases of OCS lands.²⁹⁴ Some DOI officials argue that overestimating the value of OCS resources is ultimately more costly than underestimating resource values because overestimating the value of OCS lands may result in acreage not being leased and developed, since the high bid is less than the government estimate. These officials argue that receipt of fair market value is secondary to the national policy of developing offshore resources.²⁹⁵ The argument fails to note that OCS lands are public resources and that it is the government’s responsibility to assure that they are not leased to industry for less than what they are worth.²⁹⁶ It also ignores the

291. H.R. REP. NO. 590, *supra* note 8, at 149, reprinted in 1978 U.S. CODE CONG. & ADMIN. NEWS 1555.

292. *Watt v. Energy Action Educ. Found.*, 454 U.S. 151, 162 (1981).

293. *Hearings on OCS*, *supra* note 99, at 411 (statement of Andrew Palmer, Director, Oceans, Coast and Public Lands Project, Envtl. Policy Inst.). Secretary Watt was also criticized for leasing coal reserves without receiving fair market value. On April 28, 1982, the DOI held the largest federal coal lease sale in the nation’s history. It offered about 1.6 billion tons of coal reserves in the Powder River Basin of Wyoming and Montana. The sale results were controversial. DOI’s offer to lease so much coal in a depressed market raised questions as to whether a fair return was received for coal leases. See COMPTROLLER GENERAL, GENERAL ACCOUNTING OFFICE, PUB. NO. GAO/RCED-83-119, REPORT TO THE CONGRESS, ANALYSIS OF THE POWDER RIVER BASIN FEDERAL COAL LEASE SALE: ECONOMIC VALUATION IMPROVEMENTS AND LEGISLATIVE CHANGES NEEDED 1 (1983). GAO found that the amount received from the leases was about \$100,000,000 less than estimates of fair market value. *Id.* at 25.

294. OCS SALE 35, *supra* note 223, at 1; EARLY ASSESSMENT OF DOI’S AREA-WIDE LEASING PROGRAM, *supra* note 96, at 18.

295. COMPTROLLER GENERAL OF THE UNITED STATES, PUB. NO. RED-75-359, REPORT TO THE CONGRESS, OUTER CONTINENTAL SHELF OIL AND GAS DEVELOPMENT—IMPROVEMENTS NEEDED IN DETERMINING WHERE TO LEASE AND AT WHAT DOLLAR VALUE 16-17 (1975).

296. *Id.*

OCSLAA mandate to emphasize the receipt of fair market value in leasing OCS lands as coequal with development and environmental protection.²⁹⁷

III. CONGRESSIONAL LEASING MORATORIA

The Reagan administration's continued support for the areawide leasing concept and its refusal to delete areas of environmental sensitivity and economic importance from lease sales was perceived by coastal states and environmental groups as a resource program weighted heavily toward energy production, irrespective of legitimate state concerns for balanced OCS development.²⁹⁸ The administration's opposition to continued funding for state coastal management programs, OCS revenue sharing, and consistency requirements led states and local citizens to conclude that they were taking all the risks of OCS activity but receiving none of the benefits in return.²⁹⁹ These factors, combined with pressure from the Department of Defense for deletions of tracts for military uses³⁰⁰ and growing concern over the receipt of fair market value, prompted Congress to impose leasing moratoria on areas of the OCS.³⁰¹

The total area in all moratoria enacted in the various appropriations acts from fiscal year 1982 through fiscal year 1989 has increased

297. 43 U.S.C. § 1344(a)(4) (1982).

298. *Hearings on OCS Leasing Activities*, *supra* note 102, at 2-3; *Hearings on OCS*, *supra* note 99, at 399 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council); *Offshore Oil and Gas Oversight: Hearings on Moratoria on Offshore Oil and Gas Leases Before the Subcomm. on Panama Canal/Outer Continental Shelf of the House Comm. on Merchant Marine and Fisheries*, 98th Cong., 2d Sess. 118-24 (1984) [hereinafter *Hearings on OCS Moratoria*] (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

299. *Hearings on OCS*, *supra* note 99, at 399 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council, Inc.); *Hearings on OCS Moratoria*, *supra* note 298, at 24. See *supra* notes 159-81 and accompanying text.

300. *Hearings on OCS Moratoria*, *supra* note 298, at 48-56, 292-96; *Hearings on OCS*, *supra* note 99, at 399-400 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council, Inc.).

301. *Hearings on OCS*, *supra* note 99, at 399-400 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council, Inc.); *Hearings on OCS Moratoria*, *supra* note 298, at 124-27 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.). Leasing moratoria have been enacted by placing restrictions on the annual Interior appropriation acts on spending funds for the purpose of prelease preparation on holding certain lease sales. *Department of the Interior and Related Agencies Appropriations for 1989—Part 6: Hearings of the Testimony of Public Witnesses Before the Subcomm. on the Department of the Interior and Related Agencies of the House Comm. on Appropriations*, 100th Cong., 2d Sess. 5 (1988) [hereinafter *House Hearings on the 1989 DOI Appropriations—Part 6*]; *Hearing on OCS Leasing Activities*, *supra* note 102, at 82 (statement of William Clark, Secretary of the Interior).

from 736,000 acres to 25.7 million acres annually, totalling approximately 181 million acres. Proposals are pending in Congress to extend the existing moratoria and add additional acres to those already restricted.³⁰² There are also proposals to prohibit leasing in some OCS areas along the coasts of California and Massachusetts until the year 2000.³⁰³

A. *The Rationale for Leasing Moratoria*

Coastal states, local governments, and environmental groups have supported the leasing moratoria³⁰⁴ claiming that the limitations were modest and focused on areas of great environmental sensitivity which the DOI was unwilling to protect.³⁰⁵ The moratorium areas have significant environmental assets in fisheries, habitats for endangered marine species, and coastal-related tourism.³⁰⁶ Georges Bank, in the North Atlantic planning area, is one of the most productive fishing areas in the world, supporting over 40,000 jobs in New England and sustaining a fishing industry of over \$1 billion annually.³⁰⁷ Included

302. *Hearing on OCS Leasing Activities*, *supra* note 102, at 82-83 (statement of William Clark, Secretary of the Interior).

303. *See Hearing on OCS Leasing Activities*, *supra* note 102, at 260 (statement of Sarah Chasis, Senior Staff Attorney, National Resources Defense Council, Inc. and Lisa Speer, Resource Specialist, National Resources Defense Council, Inc.). *See also Consideration of Legislation to Restrict the Department of the Interior's Oil and Gas Leasing Program on the Outer Continental Shelf: Hearings on H.R. 2059 Before the Subcomm. on Mining, Forest Management, and Bonneville Power Administration of the House Comm. on Interior and Insular Affairs*, 98th Cong., 1st Sess. 3-12 (1984); *House Hearings on the 1989 DOI Appropriations—Part 6*, *supra* note 301, at 239-42.

304. *Hearings on OCS*, *supra* note 99, at 325 (statement of Representative Leon Panetta of California); *Hearings on OCS Moratoria*, *supra* note 298, at 165-79 (statement of C. Deming Cowles, Washington Representative, United Fishermen of Alaska), at 211-25 (statement of John Paul Jones, Vice President, Bering Sea Fisherman's Ass'n). The majority of the California congressional delegation, including Senators, the state's Attorney General, and the majority of its coastal cities and counties have expressed their strong support for a continuation of the moratorium. Perhaps most important, in 1984, both bodies of the state legislature approved Joint Resolution 42, which calls for a five-year prohibition on OCS leasing of all California's moratorium areas. *Hearings on OCS*, *supra* note 99, at 325-26 (statement of Representative Leon Panetta of California).

305. *Hearings on OCS*, *supra* note 99, at 325-26 (statement of Representative Leon Panetta of California); *Hearing on OCS Leasing Activities*, *supra* note 102, at 252-61 (statement of Sarah Chasis, Senior Staff Attorney and Lisa Speer, Resource Specialist, Natural Resources Defense Council, Inc.).

306. *Hearings on OCS*, *supra* note 99, at 326-27 (statement of Representative Leon Panetta of California); *Hearing on OCS Leasing Activities*, *supra* note 102, at 252-60 (statement of Sarah Chasis, Senior Staff Attorney and Lisa Speer, Resource Specialist, Natural Resources Defense Council, Inc.).

307. *Hearing on OCS Leasing Activities*, *supra* note 102, at 252-60 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc. and Lisa Speer, Resource Specialist, Natural Resources Defense Council, Inc.).

in the California moratorium is the pristine Big Sur coastline, as well as communities dependent on the state's \$16 billion fishing and tourism industries.³⁰⁸ These industries would be severely damaged by chronic oil discharges, the visual pollution of offshore platforms, and most destructive of all, a major oil spill into the marine environment.³⁰⁹

The impact on overall acreage made available to industry for lease and on petroleum production is claimed to be minimal.³¹⁰ The fiscal year 1984 prohibition represented approximately 8.5% of the estimated hydrocarbon resources which were scheduled to be offered in that year.³¹¹ Areas within the leasing moratoria in fiscal year 1986 contained only 8% of the nation's overall OCS reserves and 5% of the total OCS acreage eligible for lease.³¹² Even with the moratoria in 1986, more than 170 million OCS acres containing over 70% of the United States total estimated OCS hydrocarbon reserves were available for lease during that fiscal year alone.³¹³

Supporters of OCS leasing moratoria also claim that the prohibition does not threaten the nation's energy security, employment, or the economy in general.³¹⁴ Since the imposition of leasing moratoria in 1982, the economy has improved, unemployment has decreased, oil prices have fallen, and OCS leasing, drilling rig utilization, and production have risen.³¹⁵ Since the amount of oil in the moratoria areas is so small—only 8% of total OCS estimated reserves—lifting the restriction would have a minimal impact on United States energy security.³¹⁶

Moreover, in spite of its rhetoric of national energy independence, the Reagan administration pursued policies which were fundamentally inconsistent with the drive for that goal. The administration's 1986

308. *Id.* at 254-56; *Hearings on OCS, supra* note 99, at 326-27 (statement of Representative Leon Panetta of California).

309. *Hearings on OCS, supra* note 99, at 327. *See also id.* at 393-402 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council, Inc.).

310. *Hearing on OCS Leasing Activities, supra* note 102, at 261 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc. and Lisa Speer, Resource Specialist, Natural Resources Defense Council, Inc.).

311. *Id.* at 251-52.

312. *Hearings on OCS, supra* note 99, at 400-01 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council, Inc.).

313. *Id.* at 328 (statement of Representative Leon Panetta of California).

314. *Id.* at 401 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council, Inc.).

315. *Id.*

316. *Id.*; *Hearing on OCS Leasing Activities, supra* note 102, at 266-67 (statement of Elizabeth Raisbeck, Legislative Director, Friends of the Earth).

fiscal year budget proposals included discontinuing purchases for the strategic petroleum reserve (SPR), the nation's first line of defense against disruptions in foreign petroleum supplies. The budget proposal would have left the SPR more than 250 million barrels short of the 650 million barrel goal established by Congress. The administration also proposed drastic budget cuts for programs which are vital to a comprehensive national energy independence strategy, including fossil fuel research, solar and renewable energy research, and energy conservation.³¹⁷

Furthermore, it was argued, a leasing moratorium would not harm the employment of minorities. In 1984, only 4.3% of those employed in the crude petroleum and natural gas extraction industry were black. However, in those industries most likely to be impacted by OCS activities—the fishing, hotel, and restaurant industries—blacks account for 8.8%, 16.5% and 9.7% of the respective work forces.³¹⁸ The American steel industry has not been affected by the moratoria. A recent United States Trade Commission report stated that of ten contracts for offshore oil platforms put out for bid since 1979, only one has been awarded to a domestic fabricator.³¹⁹

Advocates of leasing moratoria, therefore, maintain that a careful balancing of resource potential against environmental risk weighs in favor of imposing moratoria on the environmentally sensitive and productive areas of the United States' OCS.³²⁰ Supporters of leasing moratoria feel that such restrictions are necessary and will continue to be necessary until a more rational and balanced OCS program has been instituted.³²¹

B. *The Drawbacks of Leasing Moratoria*

The Department of the Interior³²² and the offshore oil and gas industry have objected to the imposition of congressional leasing moratoria, claiming that these prohibitions undermine both the national

317. *Hearings on OCS*, *supra* note 99, at 329 (statement of Representative Leon Panetta of California).

318. *Id.* at 336.

319. *Id.* at 336-37.

320. *Hearing on OCS Leasing Activities*, *supra* note 102, at 248-50 (statement of Lisa Speer, Resource Specialist, Natural Resources Defense Council, Inc.).

321. *Hearings on OCS*, *supra* note 99, at 330-33 (statement of Representative Leon E. Panetta of California); *Hearings on OCS Moratoria*, *supra* note 298, at 115, 118 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

322. *Hearings on OCS Moratoria*, *supra* note 298, at 46 (statement of Garrey E. Caruthers, Assistant Secretary, Land & Minerals Management, U.S. Dep't of the Interior).

security and economic well-being of the United States.³²³ Former Secretary of the Interior Clark stated that the moratoria effectively repealed the OCSLAA and that he "should consider closing MMS and spending [his] time among the other nine . . . [DOI] bureaus!"³²⁴ The petroleum industry has negatively characterized the effect of the moratoria: "If a foreign power had managed to do to us what we have done to ourselves, to shape our energy policy so disastrously, we would call it an act of war."³²⁵

The worst single effect of leasing moratoria has been the disruption of exploration continuity in OCS areas, adding additional delay to an already lengthy process.³²⁶ Developing a single OCS well can take as long as ten to fifteen years from the time of exploration activities to production.³²⁷ Uncertainty about whether particular areas will or will not be available for lease creates confusion and inefficiency in industry leasing decisions. Industry must invest millions of dollars to determine where to spend scarce capital bidding on a tract if it becomes available for lease; now the area may later be included in a leasing moratorium.³²⁸ Leasing moratoria prevent the DOI from determining the hydrocarbon potential of these areas; therefore, the energy policies of the United States are based on incomplete information.³²⁹ Explora-

323. *Id.* at 228 (statement of C.B. Wheeler, Senior Vice President, Exxon Co., U.S.A., representing Am. Petroleum Inst.). The petroleum industry has extensively editorialized against the moratoria. See generally *Fine Line Between Issues*, Oil & Gas J., Apr. 18, 1988, at 20; *OCS: A Familiar Issue*, Oil & Gas J., Mar. 21, 1988, at 28; *Showdowns Loom on California OCS*, Oil & Gas J., Mar. 2, 1987, at 27; *Moratorium Sidestepped*, Oil & Gas J., Aug. 4, 1986, at 23; *Moratorium Renewed*, Oil & Gas J., July 21, 1986, at 30; Williams, *Environmental Objections Block Important West Coast Oil Work*, Oil & Gas J., Apr. 21, 1986, at 17-22; *Moratorium Loses*, Oil & Gas J., Dec. 2, 1985, at 50; *Groups Hit OCS Leasing Moratoriums*, Oil & Gas J., Apr. 1, 1985, at 66; *Simultaneous Leasing Escapes Congressional Axe—This Time*, Oil & Gas J., July 2, 1984, at 17; *Moratoriums Seen Locking Up Big OCS Resource*, Oil & Gas J., June 18, 1984, at 92; *Concern Over Environment or Economic Obstructionism?*, Oil & Gas J., Feb. 13, 1984, at 31; *Congress Subverts its Own OCS Development Mandate by Denying Funds for Lease Sales*, Oil & Gas J., Nov. 28, 1983, at 39.

324. *Hearing on OCS Leasing Activities*, *supra* note 102, at 117.

325. *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 5*, *supra* note 136, at 202 (statement of Robert E. Harris, President and Chief Executive Officer, Nat'l Supply Co.). The controversy over leasing moratoria has even involved senior citizen groups. The National Alliance of Senior Citizens opposed the prohibition, claiming that elderly consumers who live on fixed incomes cannot afford rising energy costs or energy shortages that may subject seniors to debilitating illnesses. *Id.* at 182-85.

326. *Hearing on OCS Leasing Activities*, *supra* note 102, at 336 (statement of Atlantic Richfield Co. on Moratoria Affecting Oil and Gas Leasing on the OCS).

327. *Id.* at 180 (statement of Max G. Pitcher, Vice President, N. Am. Exploration, Conoco, Inc., on behalf of the Am. Petroleum Inst.).

328. *Id.* at 179-80.

329. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 120 (statement of

tion continuity is also necessary in order to pursue promising geologic basins. Although leasing moratoria have prohibited exploration in only a relatively small portion of the total United States OCS, it is the nearshore, shallow areas closed to exploration by moratoria that offer the greatest potential for discovering economically viable oil and gas reserves.³³⁰

Some advocates of leasing moratoria claim that one-year delays have no significant effect on future energy production. However, when those prohibitions are extended and expanded annually, the delay undermines this country's prospects for energy security. In addition, new oil and gas supplies will take longer to deliver to American consumers.³³¹ If the areas prohibited in the fiscal year 1984 appropriations act were to be permanently removed from leasing, approximately 2.24 billion barrels of oil would be foregone.³³² This production could have replaced domestic oil and gas reserves which are rapidly being depleted. The proved oil and natural gas reserves of the United States have declined by 30% since 1970.³³³ More than 75% percent of the oil the nation will require in the year 2000 must still be discovered. By 1994, the United States must find thirty-two billion barrels of domestic oil just to replace the oil the nation is depleting.³³⁴ To maintain the current level of domestic reserves and production, the United States will need to find nine million barrels of oil and fifty-five billion cubic feet of natural gas each day.³³⁵

Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.).

330. *Hearing on OCS Leasing Activities*, *supra* note 102, at 336 (statement of Atlantic Richfield Co. on Moratoria Affecting Oil and Gas Leasing on the OCS).

331. *Hearing on the Five-Year OCS Leasing Schedule*, *supra* note 4, at 25; *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 120 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.).

332. *Hearings on OCS Moratoria*, *supra* note 298, at 8 (statement of Representative John Breaux of Louisiana).

333. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 118 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.). The rapid depletion of domestic reserves is illustrated by the fact that 68% of the oil and gas reserves in the Louisiana OCS are now depleted. *Hearing on OCS Leasing Activities*, *supra* note 102, at 194 (statement of Philip J. Burguières, President & Chief Operating Officer, Cameron Iron Works, on behalf of the Nat'l Ocean Indus. Ass'n).

334. *Hearing on OCS Leasing Activities*, *supra* note 102, at 194 (statement of Philip J. Burguières, President & Chief Operating Officer, Cameron Iron Works, on behalf of the Nat'l Ocean Indus. Ass'n).

335. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 118 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.).

If the United States is to avoid further declines in domestic production, oil and gas exploration must be allowed in the most promising offshore areas.³³⁶ As much as half of this country's future oil and gas production is estimated to come from offshore areas. Nonetheless, the United States has leased and explored less of its OCS than most of the other major industrial nations of the world. Since federal OCS leasing began in 1954, only 4% of the OCS has been leased for oil and gas exploration, only 2% is currently under lease, and only 1% is producing oil or gas.³³⁷ In contrast, since 1964, the United Kingdom has leased 66 million offshore acres, 41% of its continental shelf. The United Kingdom is self-sufficient in oil production and currently exports petroleum to the United States. Canada has leased 900 million acres since 1964, nearly one-third of its 2.8 billion acre continental shelf.³³⁸

In contrast to our allies, the United States now imposes leasing moratoria on promising OCS acreage while continuing to import more than one-third of the oil it uses. Imports accounted for more than 42% of 1988 demand, a level that is higher than at the start of the 1973-74 Arab oil embargo. It is estimated that imported oil could account for more than one-half of total United States demand by 1990 and for more than two-thirds by the year 2000.³³⁹ Events in the Middle East, including the Iran-Iraq war, show how a sudden disruption to oil supplies could result due to trouble in the Persian Gulf area. Many of this country's allies and trading partners are dependent on Persian Gulf oil, and any sudden disruption would threaten United States oil and allied economic and political well-being.³⁴⁰ Oil and nat-

336. *House Hearings on the 1986 Dep't of the Interior Appropriations—Part 5*, *supra* note 136, at 204 (statement of Robert E. Harris, President & Chief Executive Officer of Nat'l Supply Co.).

337. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 119 (statement of Dan Chappell, Div. Exploration Manager for Offshore Texas and East Coast United States, Amoco Prod. Co., on behalf of the Am. Petroleum Inst.).

338. *Hearings on OCS Moratoria*, *supra* note 298, at 319 (statement of William C. O'Malley, President, Sonat Offshore Drilling, Inc., on behalf of Int'l Ass'n of Drilling Contractors).

339. *Id.* at 229 (statement of C.B. Wheeler, Senior Vice President for Exploration, Exxon Co., U.S.A., on behalf of Am. Petroleum Inst.); *Department of the Interior and Related Agencies Appropriations for 1989—Part 12: Hearings Before the Subcomm. on the Department of the Interior and Related Agencies of the House Comm. on Appropriations*, 100th Cong., 2d Sess. 501 [hereinafter *House Hearings on the 1989 DOI Appropriations—Part 12*] (statement of Representative Lindy Boggs of Louisiana).

340. *Hearings on OCS Moratoria*, *supra* note 298, at 236 (statement of James D. Henry, Vice President, ARCO Exploration Co.); *Hearing on OCS Leasing Activities*, *supra* note 102, at 194-95 (statement of Philip J. Burguières, President and Chief Operating Officer, Cameron Iron Works, on behalf of the Nat'l Ocean Indus. Ass'n).

ural gas provide for over two-thirds of all the energy used in the United States, and all indications suggest that they will continue to be the nation's chief energy sources in the foreseeable future. It takes many years to discover and produce new OCS oil and gas supplies. Leasing moratoria not only delay the search for new hydrocarbon supplies now, but will delay production in the 1990's and beyond, when the need for domestic oil and gas is likely to be far more urgent than it is today.³⁴¹

Opponents of leasing moratoria also argue that the United States cannot afford the economic costs that moratoria inflict on today's economy in terms of lost federal revenues and employment opportunities. Revenue from the OCS leasing program is the second largest contributor to the federal treasury.³⁴² OCS bonuses, rentals, and royalties provided over \$87 billion to the federal government in cumulative revenue from 1953 through 1987.³⁴³ If the 1984 fiscal year moratoria became permanent, it is estimated that approximately 3.5 billion bonus dollars would be lost and net economic value losses would total \$8.8 billion.³⁴⁴ In today's economy, it is difficult to justify congressional leasing moratoria that deny the United States revenue from this established source of funds.³⁴⁵

The benefits of the OCS leasing program extend beyond revenues to the federal government and a more secure petroleum supply for the nation. Studies analyzing the contribution of OCS activities to the United States economy found that in 1981 OCS activities generated more than 700,000 jobs, \$25 billion in expenditures and nearly 1% of this nation's total economic output. A total ban on OCS leasing off California would negatively affect a wide variety of United States industries and would be felt in virtually all fifty states. Inland states which supply a large portion of the industrial goods that support offshore petroleum operations would be particularly affected. Five of those states—Illinois, Indiana, Michigan, Ohio, and Pennsylvania—would lose approximately 35,000 jobs associated with OCS

341. *Hearings on OCS Moratoria*, *supra* note 298, at 229 (statement of C.B. Wheeler, Senior Vice President for Exploration, Exxon Co., U.S.A., on behalf of the Am. Petroleum Inst.).

342. *Id.* at 17 (statement of Representative Solomon P. Ortiz of Texas).

343. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 73.

344. *Hearings on OCS Moratoria*, *supra* note 298, at 8 (statement of Representative John Breaux of Louisiana).

345. *Id.* at 237 (statement of James D. Henry, Vice President of Finance and Planning, ARCO Exploration Co.). *See also Id.* at 17 (statement of Representative Solomon P. Ortiz of Texas).

activities.³⁴⁶

The moratoria are also having a negative impact on employment opportunities, particularly within the oilfield industry.³⁴⁷ An analysis of the effects of the leasing moratoria by the DOI for fiscal year 1984 reported that in the California OCS region, 2,085 jobs were lost.³⁴⁸ The relationship between offshore exploration activity and employment is particularly strong in the Gulf States.³⁴⁹ Offshore activity in 1984 supported approximately 10,000 jobs in Texas.³⁵⁰ A 1984 study prepared by the Texas Department of Water Resources found that one new job in the oil and gas industries creates 3.7 new jobs in other sectors of the Texas economy.³⁵¹

The offshore industry also cites its environmental safety record as an additional reason why current leasing moratoria should be lifted.³⁵² From 1954 to 1987, a total of 26,791 wells were drilled in the federal OCS.³⁵³ Despite all of this activity, only one significant oil well blow-out has occurred, resulting in the 1969 Santa Barbara oil spill.³⁵⁴ Studies have shown that the environmental damage was temporary and that the area suffered no long-term adverse environmental effects.³⁵⁵ The contribution of OCS exploration and production activities to total oil spilled in United States waters has been insignificant

346. *House Hearings on the 1989 DOI Appropriations—Part 6*, *supra* note 301, at 320-21 (statement of Richard L. Ranger, Dist. Land Manager, Arco Oil and Gas Co., on behalf of the Am. Petroleum Inst. and the Western Oil and Gas Ass'n).

347. *Hearing on OCS Leasing Activities*, *supra* note 102, at 189-90 (statement of Philip J. Burguières, President and Chief Operating Officer, Cameron Iron Works, on behalf of the Nat'l Ocean Indus. Ass'n).

348. *Hearings on OCS Moratoria*, *supra* note 298, at 38-39 (statement of Representative Jack Fields of Texas).

349. *Id.* at 4; *House Hearings on the 1989 DOI Appropriations—Part 12*, *supra* note 339, at 500 (statement of Representative Lindy Boggs of Louisiana).

350. *Hearings on OCS Moratoria*, *supra* note 298, at 4 (statement of Representative Jack Fields of Texas).

351. *Id.*

352. *Hearing on OCS Leasing Activities*, *supra* note 102, at 340 (statement of Atlantic Richfield Co. on Moratoria Affecting Oil and Gas Leasing on the OCS); *House Hearings on the 1989 DOI Appropriations—Part 6*, *supra* note 301, at 315-16 (statement of Richard L. Ranger, Dist. Land Manager, Arco Oil and Gas Co., on behalf of the Am. Petroleum Inst. and the Western Oil & Gas Ass'n); *OCS Moratoriums are Reactions to Past Circumstances, Not Current Problems*, Oil & Gas J., July 1, 1985, at 17; *Congress Subverts its Own OCS Development Mandate by Denying Funds for Lease Sales*, *supra* note 323, at 39.

353. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 31.

354. *Hearing on OCS Leasing Activities*, *supra* note 102, at 180-82 (statement of Max G. Pitcher, Vice President, N. Am. Exploration, Conoco, Inc., on behalf of the Am. Petroleum Inst.).

355. *Id.* at 181.

and exaggerated.³⁵⁶ Ironically, by enacting lease moratoria, Congress is promoting not only increased dependence on foreign oil, but is encouraging the transportation of oil on tankers which are far more dangerous to the marine environment than OCS activities.³⁵⁷

In addition, opponents of leasing moratoria point out that OCS activities do not have an adverse impact on the nation's sport and commercial fisheries.³⁵⁸ Since 1954, over 90% of the oil and gas produced in the federal OCS has come from the Gulf states of Louisiana and Texas. The commercial harvest of fish and shellfish has actually increased in the Gulf of Mexico.³⁵⁹

Finally, the DOI argues that the moratoria imposed by appropriations committees arbitrarily circumvent the objectives of the OCSLAA.³⁶⁰ The 1978 amendments clearly provide that a primary purpose of the OCS leasing process is the "expedited exploration and development of the Outer Continental Shelf in order to achieve national economic and energy policy goals, assure national security, reduce dependence on foreign sources, and maintain a favorable balance of payments in world trade."³⁶¹ In addition, in compliance with section 18 of OCSLAA, the DOI's five-year leasing program is designed to develop a balanced approach for sharing the "developmental benefits and environmental risks among the various regions."³⁶² Leasing moratoria are inconsistent with both of these objectives. They prohibit development of domestic reserves and preclude the balancing mandated by the OCSLAA by upsetting the regional distribution of development.³⁶³ To date, 97% of the wells drilled in the federal OCS are located in the Gulf of Mexico. In contrast, oil and gas leasing is prohibited in approximately 85% of the California OCS.³⁶⁴

356. *Hearings on OCS Moratoria*, *supra* note 298, at 284-86 (statement of James D. Henry, Vice President, Arco Exploration Co.).

357. *Id.* at 4 (statement of Representative Jack Fields of Texas).

358. *Id.* at 248, 288-89 (statement of Atlantic Richfield Co.); *Hearing on OCS Activities*, *supra* note 102, at 182 (statement of Max G. Pitcher, Vice President, N. Am. Exploration, Conoco, Inc., on behalf of the Am. Petroleum Inst.).

359. *Hearings on OCS Moratoria*, *supra* note 298, at 6 (statement of Representative Robert L. Livingston of Louisiana). The increase in the commercial harvest of fish and shellfish in the Gulf of Mexico is the result of more effort and of harvesting of new species. *Id.* at 248 (statement of Atlantic Richfield Co.).

360. *Id.* at 46 (statement of Garrey E. Carruthers, Assistant Secretary, Land & Minerals Management, U.S. Dep't of the Interior).

361. 43 U.S.C. § 1802(1) (1982).

362. *Id.* § 1344(a)(2)(B).

363. *Hearings on OCS Moratoria*, *supra* note 298, at 46 (statement of Garrey E. Carruthers, Assistant Secretary, Land & Minerals Management, U.S. Dep't of the Interior).

364. *Hearing on OCS Leasing Activities*, *supra* note 102, at 191-92 (statement of

Congressionally imposed leasing moratoria are in fact bad public policy. Any government action that adversely affects the timely development of OCS energy resources will have a significant impact on this nation's energy security and economy, both today and in the future.³⁶⁵ Congressional moratoria in appropriations bills are an unsound approach to formulating a national OCS leasing policy. They circumvent the detailed consultation procedures prescribed by Congress in the OCSLAA for both the development of the five-year program and the sale-specific leasing process.³⁶⁶ There are numerous statutes presently in effect designed to define and promote balanced OCS energy development, including the OCSLAA, the Coastal Zone Management Act and the National Environmental Policy Act. Leasing moratoria eliminate this balance by precluding even the possibility of energy exploration and production in areas with significant oil and gas reserves.³⁶⁷ Leasing moratoria cannot be reconciled with these statutes.

It is clearly important that the federal offshore leasing program be conducted in an environmentally safe manner. Also, it is important to remember that the hydrocarbon resources underlying the federal OCS belong to all citizens of the United States. They are not the exclusive possessions of the adjoining coastal states, and the development of these resources is not a matter that concerns only one state or only one group of states. The OCSLAA clearly provides that when vital decisions must be made concerning OCS leasing policy, it is the national interest that must prevail. Continued delay in leasing federal offshore lands is not in the national interest. The development of OCS energy resources is important to the future of United States citizens.³⁶⁸

IV. EVALUATING SECRETARY WATT'S IMPLEMENTATION OF AREAWIDE LEASING

A major policy consideration of the OCS program is the rate at which offshore resources are made available for private develop-

Philip J. Burguières, President and Chief Operating Officer, Cameron Iron Works, on behalf of the Nat'l Ocean Indus. Ass'n).

365. *Hearings on OCS Moratoria*, *supra* note 298, at 46 (statement of Garrey E. Caruthers, Assistant Secretary, Land & Minerals Management, U.S. Dep't of the Interior).

366. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 13 (statement of Donald P. Hodel, Secretary of the Interior).

367. *Hearings on OCS Moratoria*, *supra* note 298, at 19 (statement of Representative Norman D. Shumway of California).

368. *House Hearings on the 1989 DOI Appropriations—Part 6*, *supra* note 301, at 316, 322 (statement of Richard L. Ranger, Dist. Land Manager, Arco Oil and Gas Co., on behalf of the Am. Petroleum Inst. and the Western Oil and Gas Ass'n).

ment.³⁶⁹ Former Secretary Watt's decision to increase the OCS acreage leased annually was based on six goals of the Reagan administration: (1) to increase domestic production on the OCS and lessen the nation's reliance on foreign energy supplies; (2) to expand the amount of acreage leased; (3) to inventory the resources of the OCS; (4) to boost the economy; (5) to create market-oriented conditions for offshore production; and (6) to continue protection of the environment.³⁷⁰

A major goal of Secretary Watt's OCS program was to increase domestic production and to decrease the nation's dependence on foreign oil.³⁷¹ The Secretary's program, however, has had little or no effect on the domestic production of OCS oil and gas and has not lessened United States reliance on foreign oil.³⁷² Production of hydrocarbon resources from the federal OCS has remained fairly constant, rising from 9.3% of domestic oil production in 1981 to only 12.1% in 1987. Natural gas production has also remained relatively constant, growing slightly from 24% to 26% of the total United States production in those respective years.³⁷³ Furthermore, United States dependence on foreign oil has increased from approximately 34% of total consumption in 1981 to 42% of total consumption in 1988. Particularly worrisome is the fact that since 1986, approximately 90% of the increase in United States oil imports has come from OPEC sources, primarily Middle East countries.³⁷⁴

Two additional key objectives of the Watt program were to expand the amount of acreage leased and to inventory the nation's OCS energy resources.³⁷⁵ The oil industry now holds leases on more than 26 million acres of the OCS, 22.3 million in the Gulf of Mexico alone.³⁷⁶ However, much of this has yet to be drilled.³⁷⁷ Results of areawide lease sales held since 1983 indicate that an increased amount of acreage has been leased. In 1984, a record 7.5 million acres were

369. OCS SALE 35, *supra* note 223, at 15.

370. OCS Oversight Hearings—Part 2, *supra* note 1, at 49-55 (statement of James G. Watt, Secretary of the Interior).

371. *Id.*

372. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 55.

373. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 85.

374. Hamilton, *U.S. Oil Output Drops to 24-Year Low*, Washington Post, Jan. 19, 1989, at A13, col. 2.

375. OCS Oversight Hearings—Part 2, *supra* note 1, at 55 (statement of James G. Watt, Secretary of the Interior).

376. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 13.

377. Hearings on OCS Leasing Process—Part 1, *supra* note 98, at 457 (statement of Patricia E. Hughes, OCS Coordinator, Massachusetts Coastal Zone Management Office).

leased.³⁷⁸ However, much of this increase has been limited to the Gulf of Mexico.³⁷⁹ Starting with the advent of areawide leasing in 1983 through 1986, leases have been awarded for approximately 18.2 million acres in the Gulf of Mexico region.³⁸⁰ In contrast, only 3.6 million acres have been leased in the Alaska, Atlantic, and Pacific OCS regions.³⁸¹ Similarly, from 1954 through 1986, 26,019 wells were drilled in the federal OCS.³⁸² The majority of these—24,983—were drilled in the Gulf of Mexico. Wells drilled in the Alaska, Atlantic, and Pacific regions totaled only 1,036.³⁸³ From 1983 through 1986, 3,733 wells were drilled in the Gulf of Mexico. In contrast, only 191 wells were drilled in the remaining United States OCS regions.³⁸⁴ It appears, therefore, that Secretary Watt's program has encouraged more leasing of OCS acreage but has not increased the rate of OCS exploration, with the exception of the Gulf of Mexico.³⁸⁵

Secretary Watt repeatedly claimed that his program was an integral part of President Reagan's economic recovery package³⁸⁶ and would increase treasury revenues.³⁸⁷ There is no question that the Watt program's increased size and pace of lease offerings resulted in more annual revenues to the federal treasury than in past years.³⁸⁸ Total bonuses paid for leases for the 1981-86 period were approximately \$22.2 billion. In contrast, bonuses paid for leases from the beginning of the federal OCS program in 1954 through 1980 totalled only \$30.8 billion.³⁸⁹ There remain, however, serious concerns as to whether these figures represent fair market value for the sale of public resources.³⁹⁰

The need to generate revenues in order to reduce the federal

378. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 12.

379. Vass, *A Comparison of American and British Offshore Oil Development During the Reagan and Thatcher Administrations—Part II*, 21 TULSA L.J. 225, 296-98 (1985) [hereinafter Vass II].

380. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 10.

381. *Id.*

382. *Id.* at 31.

383. *Id.*

384. *Id.* at 30-31.

385. *Hearings on OCS Leasing Process—Part I*, *supra* note 98, at 457 (statement of Patricia E. Hughes, OCS Coordinator, Massachusetts Coastal Zone Management Office).

386. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 51 (statement of James G. Watt, Secretary of the Interior).

387. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 55.

388. *Hearings on OCS Moratoria*, *supra* note 298, at 124-25 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

389. 1987 FEDERAL OFFSHORE STATISTICS, *supra* note 49, at 12.

390. See *supra* notes 220-97 and accompanying text.

budget deficit was a consideration in developing the accelerated OCS leasing schedule.³⁹¹ The Office of Management and Budget encouraged the DOI to pursue an aggressive OCS leasing program as an important revenue enhancing measure,³⁹² and DOI spokesmen have acknowledged the contribution the OCS program makes in raising revenues for the Treasury.³⁹³ Richard Delaney, Assistant Secretary of Environmental Affairs and Director of the Coastal Zone Management Program in Massachusetts, has charged that the *main* goal of the Watt OCS leasing plan was, in fact, to collect revenue to offset the federal budget deficit.³⁹⁴

Although it produced increased revenues, Secretary Watt's program did not promote competitive market conditions for OCS production. In fact, the opposite occurred. Large acreage offerings and the increased sale frequency produced conditions in which an economically competitive market did not exist.³⁹⁵

Secretary Watt also failed to take measures ensuring the continued protection of the environment. As noted previously, at the same time the DOI was rapidly accelerating OCS oil and gas leasing, the Reagan administration proposed the elimination of federal funding for state implementation of the Coastal Zone Management Program, the Coastal Energy Impact Program, and the National Sea Grant Program. These programs provide federal funding which is used to mitigate the adverse impact of coastal energy development.³⁹⁶

The apparent guiding philosophy behind Secretary Watt's OCS program was to lease as much of the OCS as possible, with little con-

391. *Hearing on the Five-Year OCS Leasing Schedule*, *supra* note 4, at 2-3; *OCS Oversight Hearings—Part 1*, *supra* note 36, at 316; PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 23; Jennrich, *U.S. Oilmen Supporting Reagan, but Some Fear Broken Promises*, *Oil & Gas J.*, Oct. 11, 1982, at 57-58. Secretary Watt's program was not the first time that the OCS program has been used to generate revenues for the federal government. In the 1970's, "the needs of the Bureau of Budget [now the OMB] dictated when and where to lease. The Shelf oil and gas-leasing program was heavily influenced by the desire to generate revenues for the [federal] Treasury." COMPTROLLER GENERAL, U.S. GENERAL ACCOUNTING OFFICE, PUB. NO. RED-75-343, REPORT TO CONGRESS: OUTLOOK FOR FEDERAL GOALS TO ACCELERATE LEASING OF OIL & GAS RESOURCES ON THE OUTER CONTINENTAL SHELF 6 (1975) [hereinafter OUTLOOK FOR ACCELERATING OCS LEASING].

392. *OCS Oversight Hearings—Part 3*, *supra* note 88, at 22. See also Palmer & Kelly, *Government Praised for Policy Changes*, OFFSHORE, June 20, 1983, at 35, 38.

393. *OCS Oversight Hearings—Part 2*, *supra* note 1, at 96 (statement of J. Robinson West, Assistant Secretary for Policy, Budget & Admin., U.S. Dep't of the Interior).

394. *Hearings on OCS Lease Sales—Part 2*, *supra* note 208, at 324 (statement of Richard Delaney, Chairman, New England/New York Coastal Zone Task Force).

395. See *supra* notes 227-46 and accompanying text.

396. See *supra* notes 160-81 and accompanying text.

cern for the revenue impact of flooding the market with tract offerings and with no assurance about when oil and gas would be produced or whether state and local governments could effectively plan for accelerated offshore development.³⁹⁷ The results of this decision demonstrate the effects of operating a leasing program based on such a philosophy. Leasing the federal OCS to industry faster than is practicable has made it difficult to plan for environmental protection,³⁹⁸ assess the value of OCS resources,³⁹⁹ and promote economic competition.⁴⁰⁰ This situation has contributed to uncertainty about the value of OCS resources, has encouraged private speculation in these resources, and has caused industry to allocate scarce capital on lands with little or no resource potential.⁴⁰¹ As a result, Secretary Watt's program resulted in less revenue for the Treasury than would have been received if the slower pace of the prior tract-selection process had been followed.⁴⁰²

Secretary Watt's justification for accelerated leasing was based on the flawed assumption that making large amounts of offshore acreage available for lease would stimulate increased production of OCS oil and gas.⁴⁰³ In fact, the production of hydrocarbon reserves is far more dependent upon the prevailing economics of exploration and development than on the number of leases distributed.⁴⁰⁴ Market forces constrain the economic viability of development of OCS leases. The current world-wide excess of petroleum production capacity, the continuing depressed demand for petroleum, and the rising costs of developing a lease into a producing unit limit the development of OCS reserves. These conditions make investment in developing new hydrocarbon reserves a risky venture and are more important factors in industry decision making than the availability of large numbers of lease

397. OCS SALE 35, *supra* note 223, at 16.

398. *Hearings on OCS Moratoria*, *supra* note 298, at 150 (statement of Sarah Chasis, Senior Staff Attorney, Natural Resources Defense Council, Inc.).

399. *Id.* at 124-30 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

400. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 18-21.

401. *Hearings on OCS Moratoria*, *supra* note 298, at 124-30 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.); OCS SALE 35, *supra* note 223, at 33.

402. EARLY ASSESSMENT OF DOI'S AREAWIDE LEASING PROGRAM, *supra* note 96, at 18.

403. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 55; *Hearings on OCS Moratoria*, *supra* note 298, at 127 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

404. *Hearings on OCS Moratoria*, *supra* note 298, at 127-28 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

offerings.⁴⁰⁵ The transfer of large amounts of scarce industry capital to the federal government in the form of bonuses paid for leases may have diverted needed financing from exploration budgets and may have actually caused companies to defer development of OCS tracts.⁴⁰⁶ For example, while the number of producing leases has steadily risen during the Reagan administration, the ratio between non-producing and producing leases has also risen, indicating that the Watt program has been a successful lease acquisition program, but that industry has deferred developing the leases it has acquired.⁴⁰⁷ In sum, the Watt leasing policies have been constrained by the price of oil because development of OCS gas and oil will proceed no faster than market forces will allow.

Areawide leasing is a workable concept. A concept similar to areawide leasing is used in most other countries, including Great Britain and Norway.⁴⁰⁸ The major issues in any offshore leasing policy are how the government, as owner of public resources, determines which areas contain the most promising geologic structures for hydrocarbons and are most likely to be of interest to industry, and how it decides which areas should be deleted from lease offerings because their unique resources could be adversely affected by OCS development activities.⁴⁰⁹ Areawide leasing as implemented by Watt's DOI performed neither of these tasks well. The DOI essentially abdicated decisions on selecting the most promising acreage to industry and waited until the last step in the process, the sale, to find out which areas were the most promising. The DOI placed the burden of demonstrating that certain areas should be deleted from lease offerings on the states and other interested parties. The basic presumption was that the entire planning area would be offered in a sale unless the DOI was pressured to delete an area.⁴¹⁰

The Watt OCS program was hastily developed and did not ade-

405. *Id.*; *Hearings on OCS*, *supra* note 99, at 409 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

406. *Hearings on OCS Moratoria*, *supra* note 298, at 128 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

407. *Id.*

408. *Vass II*, *supra* note 379, at 306-08. The rapid development of the North Sea is largely attributed to the British policy of offering and licensing vast amounts of OCS acreage. British blocks are more than 10 times as large as United States tracts, and Norwegian blocks are about 20 times as large. *Id.* at 306.

409. *Hearings on OCS Leasing Process—Part 1*, *supra* note 98, at 491 (statement of Charles S. Colgan, Director, Policy Div., Maine State Planning Office).

410. *Id.*

quately address the concerns of coastal states and interested parties. The Comptroller General reviewed the Watt program and concluded:

[R]edesign of the leasing program appears to have been done within Interior with little or no input from other Federal agencies and only minor consideration of input from the public sector. The new program reflects the Administration's policy decision to accelerate mineral leasing more than it reflects the comments received through the public participation and review process⁴¹¹

The DOI conducted few studies assessing the potential impact of the new OCS program.⁴¹² In particular, the DOI did not evaluate the program's potential impact with respect to: (1) industry competition and small company participation in OCS lease sales; (2) the ability of state and local governments to participate in OCS decision making; (3) the use and impact of alternative bidding systems; (4) longterm revenues to the federal government; and (5) the impact on the economy.⁴¹³

The goals of the Watt program might have been accomplished by amending the OCSLAA to broaden the DOI's authority in the leasing process. This approach was neither proposed nor considered. Instead, Secretary Watt radically altered the OCS program on the basis of the discretion that the OCSLAA already delegated to the Secretary. His unilateral action, however, was hindered by the lack of a bipartisan consensus that an amended OCSLAA would have provided.⁴¹⁴

411. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 28. See also GAO: *OCS Leasing Plan is Too Much*, Oil & Gas J., Jan. 11, 1982, at 44-45.

Previous attempts by the DOI to accelerate OCS leasing displayed similar planning flaws. The Comptroller General characterized DOI's 1974 plan to lease 10 million OCS acres as "the most critical policy decision in the 20-year history of Federal Shelf leasing; one which deserved careful analysis and considerations." OUTLOOK FOR ACCELERATING OCS LEASING, *supra* note 391, at 4. When the Comptroller General analyzed the 1974 plan, he found that the proposal was:

- [1] hastily conceived by Interior under pressures exerted by the presence of the energy crisis and fears that the newly formed FEA would assume responsibility for the Shelf leasing program;
- [2] developed with little input by the operating levels of BLM and [USGS] and based on overly optimistic assumptions and inadequate data;
- [3] adopted by Interior policy officials despite opposition from program personnel in BLM and [USGS]; and
- [4] developed and adopted without considering environmental impacts, national-regional supply-and-demand needs, or alternatives to large-scale expansion of Shelf leasing.

Id.

412. PITFALLS IN INTERIOR'S ACCELERATED OCS LEASING PROGRAM, *supra* note 55, at 47.

413. *Id.* at 38, 47-48.

414. Vass *I*, *supra* note 35, at 60-61.

During the development of his program and during individual lease sales held under his supervision, Secretary Watt did only the bare minimum required under the OCSLAA to allow for state participation.⁴¹⁵ He did not follow the spirit and intent of the OCSLAA.⁴¹⁶ By observing only the letter of OCSLAA, Secretary Watt fostered an atmosphere of confrontation with the states and other interested parties that served only to delay further an already lengthy process of leasing OCS lands.⁴¹⁷ Secretary Watt's policy of brinksmanship in dealing with the coastal states and other interested parties, by refusing to delete environmentally sensitive tracts from lease offerings, forced them to initiate litigation to enjoin the sales.⁴¹⁸ The policy resulted in leasing moratoria advocated by groups concerned about particular coastal areas.⁴¹⁹

A direct consequence of state frustration with the Watt program was unprecedented litigation. In the first two years of the Watt program, eight of the fifteen scheduled lease sales were challenged on environmental grounds. In comparison, in the four years prior to the adoption of the Watt leasing program, only five lawsuits on environmental grounds were filed against the twenty lease sales scheduled.⁴²⁰ Secretary Watt's program resulted in major delays from litigation and confrontation rather than accelerating the leasing of OCS lands as envisioned by the Reagan administration.⁴²¹ In fact, a more modest pro-

415. *California v. Watt*, 520 F. Supp. 1359, 1385 (C.D. Ca. 1981), *aff'd in part and rev'd in part*, 683 F.2d 1253 (9th Cir. 1982), *rev'd sub nom. Secretary of Interior v. California*, 464 U.S. 312 (1984); HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 36.

416. *California v. Watt*, 520 F. Supp. at 1385-86; HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 2.

417. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 42. Secretary Watt failed to properly interpret the requirements of section 18 of the OCSLAA and to involve the states in meaningful participation in the OCS decision making process. *Id.* at 47. A report by the House Committee on Interior and Insular Affairs stated: "Secretary Watt is not allaying the fears and concerns of groups affected by his program. Instead, he has been obstinate and unyielding, and has seemed to encourage a fight with his critics." *Id.* at 47-48.

418. *Id.* at 44; *Hearings on OCS*, *supra* note 99, at 407 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Envtl. Policy Inst.).

419. *See supra* notes 304-68 and accompanying text.

420. *Hearing on OCS Leasing Activities*, *supra* note 102, at 249 (statement of Sarah Chasis, Senior Staff Attorney and Lisa Speer, Resource Specialist, Natural Resources Defense Council, Inc.). DOI policies under the Reagan administration encouraged confrontation with state and local governments and citizen groups. In 1984, there were over 4,000 lawsuits pending in the nation's courts that challenged DOI policies. *Clark Planning to Fine Tune Five-Year OCS Lease Sale Schedule*, *Oil & Gas J.*, Jan. 16, 1984, at 62.

421. HOUSE REP. ON SECRETARY WATT'S FIVE-YEAR OCS LEASING PLAN, *supra* note 4, at 1-2, 47-49; *Texas v. Secretary of Interior*, 580 F. Supp. 1197, 1202 (E.D. Tex.

gram that focused on the most promising geologic structures in planning areas would have produced a more rational and less controversial leasing program. Such a program would have met the national needs and would have assured compliance with both the letter and the spirit of the OCSLAA.⁴²²

CONCLUSION

The controversy surrounding former Secretary Watt, including the OCS program, eventually led to his resignation and the appointment of President Reagan's close friend William Clark as Secretary of the Interior.⁴²³ While Secretary Clark increased efforts to consider the views of coastal states and interested citizens in OCS issues, there was no significant change in the Watt policies. Secretary Clark continued to implement an accelerated schedule of OCS lease sales and areawide leasing. The administration maintained its opposition to funding federal programs that would help states plan for the impacts of OCS development activities. Thus, the controversy over OCS lease sales continued.⁴²⁴

1984) ("more commonly, states employed litigation as a means for delaying OCS development: By increasing risks and raising doubts in potential lessees' minds, the mere threat of litigation retarded federal efforts to extend OCS leasing. In sum, continuing federal-state conflict arrested expansion of OCS development.") For example, Arco forfeited a \$30 million investment by abandoning a leased area considered to be one of the best potentials of California's offshore because it did not want to risk further litigation. *Hearing on OCS Leasing Activities, supra* note 102, at 71 (statement of William D. Clark, Secretary of the Interior).

422. *Hearings on OCS, supra* note 99, at 409 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).

423. *Watt's Resignation: An Opportunity to Further Improve U.S. Land Policies*, Oil & Gas J., Oct. 17, 1983, at 43. The OCS program was one of the most controversial programs initiated by former Secretary Watt. The plan was referred to as "radical, irresponsible, extremist, and wasteful." *Senate Hearings on the Five-Year OCS Leasing Plan, supra* note 34, at 7 (statement of Senator Howard M. Metzenbaum of Ohio). In a national survey conducted by a major news magazine to rank the competence and effectiveness of President Reagan's cabinet officers, Secretary Watt was identified as "the most politically controversial of the group." U.S. NEWS & WORLD REP., July 27, 1981, at 14. For additional editorial comment by the mass media on James Watt's Interior policies, see NEWSWEEK, June 29, 1981, at 22-23; THE NEW YORKER, May 4, 1981, at 104.

424. *Hearings on OCS Moratoria, supra* note 298, at 24 (statement of Arthur J. Rocque, Jr., Chairman of the Coastal States Organization); *Hearings on OCS, supra* note 99, at 397-98 (statement of Lisa Speer, Senior Project Scientist, Natural Resources Defense Council, Inc.), at 407 (statement of Andrew Palmer, Director, Oceans, Coasts and Public Lands Project, Env'tl. Policy Inst.).